

CONTRACT AGREEMENT

by and between

CUYAHOGA COUNTY, OHIO

and

SIEMENS HEALTHCARE DIAGNOSTICS INC.

THIS AGREEMENT (the "Contract") is made and entered into this ____ day of January, 2013, by and between Cuyahoga County, Ohio ("the County"), on behalf of the Cuyahoga County Medical Examiner's Office and Siemens Healthcare Diagnostics Inc. (hereinafter the "Provider"), with corporate offices located at 1717 Deerfield Road, Deerfield, Illinois 60015 to provide service and consumables for the Viva Jr., serial number 6-9474.

WHEREAS, the County has a present need for service and consumables for the Viva Jr., at the Cuyahoga County Medical Examiner's Office; and

WHEREAS, Siemens Healthcare Diagnostics Inc., is awarded this contract, and agrees to provide service and consumables as required; and

WHEREAS, the County desires to avail itself of service and consumables from Provider for the Viva Jr., located at the Cuyahoga County Medical Examiner's Office and Provider is willing to provide such service to the County all upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Provider and the County agree as follows:

ARTICLE I - AGREEMENT AND TERM

- 1.1 Scope of Agreement. During the term of this Contract, Provider shall provide the County with the service and consumables as set forth in Schedule A.
- 1.2 Term. The term of this Contract shall commence as of January 1st, 2013; and, unless earlier terminated, in accordance with the provisions of this Contract, shall continue in effect for a period of three years from commencement date. (1/1/13 - 12/31/15). The cost of this Contract shall not exceed **Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00)**. In the event of such unforeseen circumstances the contract shall be amended by written agreement and approved by the County prior to the expiration of the original term of the contract to cover the additional time period and funds that may be required.

ARTICLE II - SCOPE OF WORK

- 2.1 Rendering of Services. Provider hereby agrees to render the services identified in Article 1.1 and incorporated by reference herein at a total price which, except as provided in

Section 1.2, shall not exceed the amount of, **Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00).**

ARTICLE III - PAYMENT AND INVOICING

Payment. During the term of this contract, the County shall pay Provider upon invoice for all consumables and services performed and under this Contract, upon receipt of said invoice and the approval of the Cuyahoga County Executive. In no event shall total compensation under this Contract, including expenses, exceed **Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00).**

4.1 Invoicing. The Provider shall submit an original itemized invoice to the County Medical Examiner's Office, at the address noted below, for all consumables and services provided and will include the following information:

- A. Itemized Product Charge.
- B. Delivery Charge.
- C. Invoice Total.
- D. Invoice Number.
- E. County Contract Number.

Cuyahoga County Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

ARTICLE IV - INDEMNITIES AND LIABILITIES

5.1 Subcontracting. This Contract was awarded to Provider based upon Provider's unique qualifications and skills, and no task required to be performed under this contract by Provider shall be subcontracted to third parties without the express written consent of Cuyahoga County.

5.2 Indemnification. Provider shall agree to release, indemnify and to hold harmless Cuyahoga County and any and all officers, agents, servants or employees thereof, from any and all responsibility or liability for Provider's gross negligence or willful misconduct under this contract. Provider acknowledges that as a political subdivision, the County is prohibited by law from entering into an indemnification agreement and that no provision of this Contract or any other contract or agreement between Provider and the County may be interpreted to obligate the County to indemnify Provider or any other party.

ARTICLE V - DISPUTE RESOLUTION AND TERMINATION

6.1 Dispute Resolution.

a) In the event of any dispute or disagreement between Provider and the County, either with respect to the interpretation of any provision of this Contract or with respect to the performance by Provider or the County hereunder, which cannot be resolved in the normal course of business,

then upon written notice of either party, each party will appoint a designated officer whose task it will be to meet for the purpose of endeavoring in good faith to resolve such dispute or to negotiate for an adjustment to such section or provision of this Contract. The designated officers shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution. Such officers will discuss the problem and/or negotiate the applicable section or provision without the necessity of any formal proceedings relating thereto. During the course of such negotiation, all reasonable requests made by one party to the other for information will be honored in order that each of the parties may be fully advised in the negotiations. The specific format for such discussions will be left to the discretion of the designated officers but may include the preparation of agreed upon statements of fact or written statements of position furnished to the other party. No formal proceedings for the binding arbitration of such dispute may be commenced until (i) resolution as contemplated in this clause has been unsuccessful and (ii) either of the parties concludes in good faith that amicable resolution through continued negotiation of the matter in issue does not appear likely and so notifies the other party.

(b) The rights and obligations of the parties under this provision shall not limit either party's right to terminate this Contract as may be otherwise permitted hereunder.

6.2 Termination for Default. Either party may terminate this Contract, in whole or in part, whenever such party determines that the other has failed satisfactorily to fulfill its obligations and responsibilities hereunder and is unable to cure such failure within a reasonable period of time, not to exceed thirty (30) calendar days or such longer period of time as may be specified in writing by the terminating party, taking into consideration the gravity and nature of the default. Such termination shall be referred to as "Termination for Default". Upon determination by either party hereto that the other has failed to satisfactorily perform its obligations and responsibilities hereunder, the party seeking termination shall notify the defaulting party in writing of the failure and of the time period that has been established to cure such failure, which time period shall be not less than ten (10) days. If the defaulting party is unable to cure the failure within the specified time period, the party seeking to terminate may, by giving written notice thereof to the defaulting party, terminate this Contract, in full or in part, as of the date specified in the notice of termination. Provider, however, shall be paid for all services and/or materials provided on or prior to the date of termination.

6.3 Termination for Financial Instability. In the event that Provider becomes financially unstable to the point of (i) ceasing to conduct business in the normal course, (ii) making a general assignment for the benefit of creditors, or (iii) suffering or permitting the appointment of a receiver for its business or its assets, or there is a filing by or against Provider of a meritorious petition in bankruptcy under any bankruptcy or debtor's law, the County may, at its option, immediately terminate this Contract under Section 5.2, the "Termination for Default" clause, by giving written notice thereof.

ARTICLE VI – ADHERENCE TO ELECTRONIC SIGNATURE POLICY OF COUNTY

6.1. By entering into this Contract, Provider, its officers, employees, subcontractors,

sub-grantees, agents or assigns, to conduct this transaction by electronic means by agreeing that all documents requiring county signatures may be executed by electronic means, and that the electronic signatures affixed by Cuyahoga County to said documents shall have the same legal effect as if that signature was manually affixed to a paper version of the document.

6.2 Provider further agrees to be bound by the provisions of Chapter 304 and 1306 of the Ohio Revised Code as they pertain to Electronic Transactions and to comply with the electronic signature policy of Cuyahoga County.

ARTICLE VII – MISCELLANEOUS

7.1 Notices. Wherever one party is required or permitted to give notice to the other pursuant to this Contract, such notice shall be deemed given when delivered by hand, via certified mail with return receipt requested, via overnight courier with signature required, and addressed as follows:

In the case of the County:

Cuyahoga County Medical Examiner's Office
11001 Cedar Avenue
Cleveland, Ohio 44106

In the case of the Provider:

Siemens Healthcare Diagnostics Inc.
1717 Deerfield Road
Deerfield, Illinois 60015

Either party may from time to time change its designated recipient or address for notification purposes by giving the other party written notice of the new designated recipient or address and the date upon which it will become effective.

7.2 Severability. If, and only to the extent that, any provision of this Contract is declared or found to be illegal, unenforceable or void, then both parties shall be relieved of all obligations arising under such provision, it being the intent and agreement of the parties that this Contract shall be deemed amended by modifying such provision to the extent necessary to make it legal and enforceable while preserving its intent. If that is not possible, another provision that is legal and enforceable and achieves the same objective shall be substituted. If the remainder of this Contract is not affected by such declaration or finding and is capable of substantial performance, then the remainder shall be enforced to the extent permitted by law.

7.3 Waiver. No delay or omission by either party in the exercise of any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver by either of the parties of any of the covenants, conditions or agreements to be performed by the other or any breach thereof shall not be construed to be a waiver of any succeeding breach thereof or of any other covenant, condition or agreement herein contained. No change, waiver, or discharge hereof

shall be valid unless in writing and signed by an authorized representative of the party against which such change, waiver, or discharge is sought to be enforced.

7.4 Survival of Terms. Termination or expiration of this Contract for any reason shall not release either party from any liabilities or obligations set forth in this Contract which (i) the parties have expressly agreed shall survive any such termination or expiration, or (ii) remain to be performed or by their nature would be intended to be applicable following any such termination or expiration.

7.5 Headings and Interpretation. The article and section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof.

7.6 Governing Law. This Contract shall be subject to interpretation under the laws of the State of Ohio.

7.7 Social Security Act. Provider shall be and remain an independent Provider with respect to all services performed hereunder and agrees to and does hereby accept full and exclusive liability for payment of any and all contributions or taxes for social security, unemployment insurance, or old age retirement benefits, pensions, or annuities now or hereafter imposed under any Local, State or Federal Law which are measured by the wages, salaries, or other remuneration paid to persons employed by Provider for work performed under the terms of this contract and further agrees to obey all lawful rules and regulations and to meet all lawful requirements which are now or hereafter may be issued or promulgated under said respective laws by and duly authorized State or Federal officials; and said Provider also agrees to indemnify and save harmless Cuyahoga County from such contributions or taxes or liability.

7.8 Assignment. Provider shall not assign, transfer, convey or otherwise dispose of this Contract, or its right to execute it, or its right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise, any of the monies due or to become due under this Contract without approval of the County Executive.

7.9 Commencement of Contract Performance. In order to protect the interest of Cuyahoga County this contract must be executed by the County Executive before compensation for the services or products set forth in this contract can be provided. Upon approval by the County Executive of this contract, however, any and all prior performance under this contract shall be deemed ratified and said performance shall be deemed to be included in this contract. Payment(s) for said prior performance shall not increase the amount of the contract limit.

7.10 Entire Agreement and Modification. This Contract, including any Schedules and documents referred to in this Contract or attached hereto, each of which is incorporated herein, constitutes the entire and exclusive statement of the agreement between the parties with respect to its subject matter and there are no oral or written representations, understandings or agreements relating to this Contract which are not fully expressed herein. The parties agree that any other terms or conditions included in any quotes, acknowledgments, bills of lading or other forms utilized or exchanged by the parties shall not be incorporated herein or be binding unless expressly agreed upon in writing by authorized representatives of the parties. No modification,

change or amendment hereof shall be valid unless such is in writing and signed by the authorized representative of the party against which such modification, change or amendment is sought to be enforced.

7.11 Confidentiality. The parties acknowledge and agree that during the term of this Agreement, Siemens Healthcare Diagnostics Inc. shall act exclusively in the best interest of the Cuyahoga County Medical Examiner's Office. Siemens Healthcare Diagnostics Inc. acknowledges that they may have access to information which is confidential and proprietary in nature. Siemens Healthcare Diagnostics Inc. expressly agrees not to use or disclose such information in any manner or for any purpose at any time during or after the effective term of this Agreement except as required by law or as required during the course of Siemens Healthcare Diagnostics Inc. work for the Cuyahoga County Medical Examiner's Office, unless authorized in writing by the Medical Examiner.

7.12 Applicable County Ordinances. All County contracts, including this Contract, are subject to all applicable County ordinances, including, but not limited to, the Cuyahoga County Ethics Ordinance, Cuyahoga County Inspector General Ordinance, and Cuyahoga County Contracting and Purchasing Procedures Ordinance. Copies of all County ordinances are available on the County Council's web site at <http://council.cuyahogacounty.us/>.

7.13 Public Records. All parties hereto acknowledge that County is a political subdivision in the State of Ohio and as such is subject to the Ohio Revised Code and other law related to the keeping and access to Public Records, including any and all applicable Sunshine Laws, open meeting requirements, and retention schedules affecting any and all manner of communication with the County and any and all documents in any format or media.

THIS AGREEMENT shall be subject to interpretation under the laws of the State of Ohio, and is subject to the review of the County Prosecutor's Office as to legal form and correctness.

IN WITNESS WHEREOF, the County and Provider have each caused this Contract to be signed and delivered by its duly authorized representative as of the date first written.

Siemens Healthcare Diagnostics Inc.

Cuyahoga County, Ohio

Edward FitzGerald, County Executive

BY: Kim A. Christensen ²
Printed Name: Kim A. Christensen
Title: SYVA Director

BY: Ed FitzGerald/apc
2013-01-28 15:18:46
Edward FitzGerald
County Executive



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MASTER EQUIPMENT AND PRODUCTS AGREEMENT

Legal Name: CUYAHOGA COUNTY, OH
Customer Name: CUYAHOGA CNTY CORONERS
OFFICE
Address: 11001 CEDAR AVE
City, State, Zip: CLEVELAND, OH 44106

Federal ID #:
Sold to Customer #: 146902

This Master Equipment and Products Agreement ("Agreement") by and between Siemens Healthcare Diagnostics Inc. ("Siemens") and the party identified under "Legal Name" (or "Customer Name" if no "Legal Name") in the heading above ("Customer") is effective as of the date of Siemens' execution ("Effective Date").

1) PURPOSE. The purpose of this Agreement is to provide general terms and conditions under which Siemens and Customer will enter into one or more individual Agreement supplements (each a "Supplement") for the lease of medical diagnostic equipment ("Equipment"), purchase of reagents (or panels), consumables and supplies ("Products") and purchase of Service (as defined in Section 4(b)). Each Supplement shall incorporate the terms and conditions of this Agreement as well as additional terms and conditions relevant to the business transaction between the parties, including the term of the Supplement ("Supplement Term").

2) TERM OF AGREEMENT. This Agreement shall commence on the Effective Date and shall remain in effect until terminated by either party with at least thirty (30) days prior written notice to the other party, provided that termination of this Agreement is not permitted while any Supplement is in effect.

3) COMMITMENT. Customer agrees to make sufficient purchases on a periodic basis during each year of the Supplement Term, but no less frequently than every ninety (90) days, to meet the minimum annual purchase commitment identified in each Supplement ("Commitment Amount"). Customer will make purchases to meet the Commitment Amount by ordering a minimum dollar amount of the Products identified on each Supplement or, if cost-per-result (CPR) pricing is applicable, by generating a minimum number of results. Pricing is set forth in each Supplement and includes a discount based on Customer's Commitment Amount.

4) EQUIPMENT MAINTENANCE AND SERVICE. (a) Equipment Maintenance. Customer is responsible for performing all maintenance requirements described in the operating manuals provided by the manufacturer and to keep the Equipment in good repair, condition and working order, ordinary wear and tear excepted. Additionally, Customer shall (i) not relocate or make alterations to the Equipment without the prior written consent of Siemens, (ii) use the Equipment solely for Customer's business purposes and own use and in accordance with the Instructions For Use, and (iii) provide reasonable access to Siemens and its agents to inspect the Equipment.

(b) Equipment Service. In addition to the operator maintenance responsibilities identified in the operating manual, the Equipment also requires periodic servicing, including preventative maintenance visits ("Service"). If Service is specified on a Supplement, Siemens will provide Service in accordance with the type of service and for

the period of time (the "Service Period") that is specified on the Supplement. Such Service shall provide all labor and parts (excluding consumables, electrodes and certain other parts) as are necessary to keep the Equipment in good working order. Service does not cover: (i) failure due to accident, neglect, or operation not set forth in the operating manuals; (ii) Customer's failure to properly maintain the Equipment in accordance with the applicable operating manuals; (iii) use of unauthorized reagents or disposables that may result in damage to or abnormal wear of the Equipment's internal components; or (iv) damage resulting from operating in environmental conditions outside those specified by the applicable operating manuals. For any time when Siemens is not responsible for providing Service, Customer will be responsible for all Service, and for any damage resulting from such Service. Customer is required to pay for the cost of any repairs to the Equipment caused by Customer's negligence, abuse or alteration of the Equipment. Siemens is not required to add any design, engineering, or performance change or development into the Equipment after it is delivered to Customer.

5) TRAINING. Siemens shall make available and Customer shall attend Siemens' Equipment training course as specified in the Supplement. The training slots shall remain available for two (2) years from the date of the Equipment delivery.

6) SHIPPING AND INSTALLATION. (a) Equipment and Product deliveries will be FOB destination and subject to Siemens' standard delivery terms and shipping policy. Siemens' standard delivery terms and shipping policy can be found at <http://www.usa.siemens.com/diagnostics-shipping-and-freight-policy>. Customer shall pay all applicable shipping and handling charges for the Equipment and Products to be delivered to the Customer installation location set forth in the Supplement (the "Premises"). Such charges may be added to the invoice or may be included in the monthly charge for the Equipment. (b) Customer will be responsible for the cost of preparing the Premises for the Equipment. This may include making structural changes or installing separate electrical circuits, dedicated phone lines and/or network connections or special plumbing, air conditioning or humidity controls. Once Customer has prepared the Premises and notified Siemens that the Premises are ready for Equipment installation, Siemens will install the Equipment at no extra cost and will provide Customer with applicable operating manuals.

7) WARRANTY. Siemens warrants to Customer that the Equipment shall be free from defects in material and workmanship and conform to the manufacturer's specifications when delivered. Any claim for breach of this warranty, if any, must be made in writing within one (1) year of the delivery of the Equipment. Customer's exclusive remedy for breach of this warranty shall be, at

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Siemens' option, the repair or replacement of the breaching Equipment or an appropriate refund, allowance or credit reflecting depreciation.

Siemens warrants to Customer that Products will be free from defects in material and workmanship and will conform to the applicable manufacturer's specifications until the date appearing on the applicable packaging. The foregoing warranty does not apply to conditions resulting from use or storage not in accordance with the manufacturer's instructions or other external causes or from operation outside the environmental parameters specified for the Products. Customer's exclusive remedy for breach of this warranty shall be the replacement of such Products.

Siemens also warrants that the use of the Equipment and Products in the form delivered to Customer and in accordance with the instructions and manufacturer's specifications will not infringe the U.S. patent of any third party. This warranty does not cover the use of the Equipment or Products in combination with any other product or equipment not approved by Siemens. Customer's exclusive remedy for breach of this warranty shall be the intellectual property indemnification set forth in Section 16 (c), below.

THE ABOVE ARE THE SOLE WARRANTIES PROVIDED BY SIEMENS UNDER THIS AGREEMENT. SIEMENS MAKES NO OTHER WARRANTIES, EXPRESS, STATUTORY OR IMPLIED, IN CONNECTION WITH THE EQUIPMENT OR PRODUCTS INCLUDING, WITHOUT LIMITATION, ANY WARRANTY AS TO DESIGN, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

No Assignee (as defined in Section 18, below) will be responsible to Customer for any problem or claim in connection with a) the use, operation or performance of the Equipment or Products; b) any interruption of service, loss of business or anticipated profits; or c) the delivery, servicing, maintenance, repair or replacement of the Equipment.

No oral or written promises as to the Equipment or Products which conflict with this warranty will bind Siemens unless signed by an authorized representative of Siemens.

8) RISK OF LOSS AND INSURANCE. (a) Customer shall be responsible for the entire amount of any loss or damage to the Equipment from whatever cause after the delivery of the Equipment, except for ordinary wear and tear. Customer shall promptly notify Siemens of any loss or damage to the Equipment. (b) Upon delivery of the Equipment and until the end of the applicable Supplement Term, Customer will maintain (i) all risk property insurance covering the Equipment up to the replacement cost value, except for ordinary wear and tear and (ii) occurrence form commercial general liability insurance including contractual liability, with a combined single limit of at least \$1 million per occurrence and in the aggregate for bodily injury and property damage liability. Siemens shall be named as a loss payee on Customer's all risk property insurance policy and an additional insured on Customer's commercial general liability policy. The insurance required herein shall be primary and non-contributory to any insurance maintained by Siemens when responding to Customer's obligation to defend and indemnify Siemens upon request, Customer shall furnish a certificate of insurance certificate

evidencing the foregoing insurance coverage. Siemens shall be provided at least thirty (30) days prior written notice if the required insurance is cancelled or materially altered. Failure to maintain the required insurance shall not relieve Customer from any liability or obligation under this Agreement.

9) TITLE TO EQUIPMENT. Siemens is the owner of and shall retain title to the Equipment. Customer shall not permit or allow any attachment, lien, security interest, or other encumbrance to be filed against the Equipment by any individual or entity other than Siemens or its Assignees. If, however, any Supplement is deemed a lease for purpose of security, Customer hereby grants to Siemens to secure all payments and other obligations of Customer to Siemens under the Supplement, a purchase money security interest in the Equipment covered by such Supplement together with all accessions, attachments, replacements, substitutions, modifications and additions thereto, now or hereafter acquired and all Proceeds (as defined in the applicable Uniform Commercial Code) thereof (including insurance proceeds). Customer shall deliver to Siemens such documents that Siemens reasonably requests in order to protect Siemens' interest in the Equipment. CUSTOMER AUTHORIZES SIEMENS TO FILE (WITHOUT CUSTOMER'S SIGNATURE), BOTH BEFORE AND/OR AFTER THE DATE OF A SUPPLEMENT AND IN ANY FILING OFFICE(S) THAT SIEMENS DETERMINES APPROPRIATE, FINANCING STATEMENTS COVERING THE EQUIPMENT.

10) TAXES. Customer is responsible for and will pay all sales, use and property taxes assessed on the possession, ownership, service, sale or use of the Equipment or Products under a Supplement (collectively, "Taxes"). If Siemens is billed directly by the taxing authority for such Taxes, Siemens shall initially pay such Taxes and subsequently re-bill Customer. If Customer pays such Taxes directly, then copies of the receipted tax bills or other evidence of payment shall be provided to Siemens upon request.

In the event that Customer is exempt from certain Taxes pursuant to a tax exemption certificate (the "Exempt Taxes"), and provided that (i) Customer maintains a valid tax exemption certificate throughout the term of this Agreement; (ii) Customer provides Siemens with a copy of such certificate; and (iii) such tax exemption is allowable and transferable to Siemens, then Siemens will not pay the Exempt Taxes and will not seek reimbursement from Customer for the Exempt Taxes. In the event that any Taxes are outside the scope of the tax exemption certificate, Customer will remain responsible for such Taxes.

11) PAYMENT. All invoices are due and payable within thirty (30) days of the date of invoice.

12) PRICE ADJUSTMENTS. Siemens may increase the prices for Products as specified in the Supplement.

13) COMPLIANCE. On a periodic basis, but no less frequently than annually, Siemens shall review whether Customer has made sufficient purchases to meet the pro-rata portion of the Commitment Amount associated with the period under review. If Customer's purchases for the period under review are insufficient to satisfy the Commitment Amount, then such deficit will be considered a

"Shortfall" to meeting the Commitment Amount. In the event of a Shortfall, Siemens, in addition to such other rights as are available by law, reserves the right to compensate for the Shortfall by taking one or more of the following actions: a) immediately implement a price increase for any and all Products for any subsequent period and/or b) invoice Customer for all or part of the Shortfall and/or c) extend the Supplement Term and/or d) increase the Commitment Amount required for any subsequent periods and/or e) terminate the Supplement pursuant to Section 15(a).

14) SOFTWARE. For Equipment containing software, no title, right or interest in the software is transferred to Customer except as expressly provided herein. The software component of the Equipment is licensed to Customer only for its own use of the Equipment. The software may not be disclosed or distributed in whole or in part to third parties or duplicated in any form or medium except as necessary for program execution or archival storage. Further, Customer shall have no right to modify, sublicense, disassemble, decompile, or otherwise reverse-engineer the software.

Notwithstanding the above terms, any open source software contained in the software component of the Equipment is licensed under the license terms applicable to that software. Where required by the specific license terms, Siemens will make the source code for such open source software available upon request from Customer in accordance with the terms of the relevant open source license. Notices and licensing information regarding such open source software are provided in the documentation associated with the Equipment, whether resident in the Equipment itself or in other form.

15) TERMINATION. (a) Siemens Termination for Default. If Customer Defaults (as defined below) under this Agreement or a Supplement and does not cure such Default within thirty (30) days after Customer has received notice of such Default from Siemens, Siemens may in its discretion and without further liability, terminate the applicable Supplement or may terminate this Agreement together with all Supplements. In the event of such termination, Customer shall be responsible for paying the Termination Amount in Section 15(b).

A Default is deemed to have occurred if Customer: (i) fails to make a payment when due; (ii) fails to complete any Supplement Term; (iii) becomes insolvent; (iv) ceases doing business; (v) assigns the Equipment lease or this Agreement for the benefit of creditors; (vi) appoints a trustee or receiver for Customer or for a substantial part of Customer's property, or initiates any proceeding under bankruptcy law by or against Customer; (vii) attempts, without Siemens' prior written consent, to remove, sell, assign, transfer, grant a lien in, sublease or part with possession of the Equipment; or (viii) fails to comply with any requirement of this Agreement or a Supplement.

(b) Effects of Termination. In the event of a termination under Section 15(a), Customer shall be obligated to pay to Siemens (i) the remaining payment amount attributable to the Equipment according to the monthly amount allocable to the Equipment that is identified in the Supplement, discounted at a rate of 3% per annum, plus (ii) all other amounts due and unpaid, plus (iii) the difference between

the applicable Commitment Amount for the entire Supplement Term and the total amount of purchases actually made by the Customer through the date of termination plus (iv) any costs and expenses, including reasonable attorney's fees, which are incurred by Siemens as a result of any Default (collectively, the "Termination Amount"). If addition of the amounts listed in (i) through (iv) results in any redundancy, Customer will only be responsible for paying each amount one time. Customer shall permit Siemens or its agents to enter the Premises and immediately recover possession of any Equipment covered by the terminated Supplement and take any other appropriate legal steps. Siemens may also sell, lease, transfer or otherwise dispose of the Equipment at one or more public or private dispositions without advertisement or notice except as required by law upon such terms and at such place as Siemens may deem advisable, and Siemens may be the purchaser at any such sale (if any such notice is required, Siemens and the Customer agree that ten (10) days notice shall be deemed to be commercially reasonable). Termination pursuant to Section 15(a) does not relieve Customer of any of its obligations under this Agreement or any Supplement including, but not limited to, payment of the Termination Amount in this Section 15(b).

16) LIMITATION OF LIABILITY AND INDEMNIFICATION. (a) Limitation of Liability. In no event shall Siemens' liability during each year of this Agreement exceed the actual loss or damage sustained by Customer under the particular Supplement giving rise to such loss or damage, up to the amount of fees payable to Siemens under such Supplement during the year in which the loss or damage occurred, however, liability for intentional misbehavior and personal injury will not be limited. **SIEMENS SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LOSS OF USE, REVENUE OR ANTICIPATED PROFITS, COST OF SUBSTITUTE EQUIPMENT, SERVICE, OR PRODUCTS (UNLESS OTHERWISE AGREED TO BY SIEMENS), OR LOSS OF STORED, TRANSMITTED OR RECORDED DATA. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, UNFORESEEN, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY SUPPLEMENT.** The limitations of Siemens' liability contained herein shall apply to Siemens and Siemens' employees, agents and subcontractors performing under this Agreement, regardless of whether such liability is based on breach of contract, tort, strict liability, breach of warranties, failure of essential purpose or otherwise, and even if Siemens or its employees, agents or subcontractors are advised of the likelihood of such damages.

The limitations of Customer's liability set forth herein do not affect Customer's liability for Claims (as defined herein) arising out of the negligent or wrongful acts or omissions of Customer, its employees or agents in connection with this Agreement or any Supplement or Customer's indemnification obligations for Claims arising from infringement of intellectual property rights, to the extent set out in this Agreement. The limitations of Siemens' liability set forth herein do not affect Siemens' liability for Claims for personal injury arising as a result of Siemens' negligence or product defect, or Siemens' indemnification obligations for Claims arising from infringement of intellectual property rights, to the extent set out in this Agreement.



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THE FOREGOING IS A SEPARATE, ESSENTIAL TERM OF THIS AGREEMENT AND SHALL BE EFFECTIVE UPON THE FAILURE OF ANY REMEDY, EXCLUSIVE OR NOT.

(b) General Indemnification. Siemens and Customer each agree to indemnify and hold the other party and its employees, directors, officers and agents (collectively, the "Indemnitees") harmless from and against any and all third party claims and associated liabilities, obligations, damages, judgments, penalties, causes of action, costs and expenses (including, without limitation, reasonable attorney's fees) imposed upon or incurred by or asserted against any of the Indemnitees ("Claims") for bodily injuries (including death) or damages to or loss of real or tangible personal property, to the extent that any such Claim arises out of the negligent or wrongful acts or omissions of the indemnifying party, its employees or agents in connection with this Agreement or any Supplement, provided that the Indemnitee provides the indemnifying party with prompt notice of the Claim, reasonable cooperation in the defense and/or settlement of the Claim and all right and power to defend and/or settle such Claim.

(c) Intellectual Property Indemnification. If Customer receives notice that any of the Equipment or Products, or parts thereof, violates the infringement warranty set forth in Section 7 herein, then Customer shall promptly notify Siemens in writing and give Siemens information, assistance and exclusive authority to evaluate, defend and settle the Claim. Siemens shall, at its own expense, defend or settle such Claim, procure for Customer the right to use the Equipment or Products, or remove or modify them to avoid infringement. If none of these alternatives are available on terms reasonable to Siemens, then Customer shall return the Equipment and/or Products to Siemens and Siemens shall refund to Customer the purchase price paid by the Customer for the Equipment or Products, less reasonable depreciation for Customer's use (if applicable). The foregoing states Siemens' entire obligation and liability, and the Customer's sole remedy, for Claims of infringement. Siemens will not defend or indemnify Customer, however, if any such Claim results from (i) use of other than the most recent version of the Equipment or Products made available to Customer by Siemens; (ii) Customer's alteration of the Equipment or Products without Siemens' written authorization; (iii) use of the Equipment or Products in combination with software or equipment not provided by Siemens; or (iv) use of the Equipment or Products in a manner that is not in accordance with the manufacturer's manual, specifications, and other accompanying documentations or other instruction from Siemens.

The obligations of indemnity shall survive the expiration or termination of the Agreement.

17) APPLICABLE LAW; JURISDICTION. THIS AGREEMENT AND ALL SUPPLEMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS, WITHOUT REFERENCE TO CONFLICTS OF LAW PROVISIONS. EACH OF THE PARTIES CONSENTS TO THE JURISDICTION AND VENUE OF FEDERAL AND STATE COURTS IN ILLINOIS FOR THE DETERMINATION OF ALL DISPUTES ARISING UNDER THIS AGREEMENT.

18) ASSIGNMENT. Customer may not assign either this Agreement, or any Supplement, or any right or obligation arising out of this Agreement or any Supplement, without the express written consent of Siemens, and such consent shall not be unreasonably withheld, provided that Customer agrees to remain primarily responsible under the Supplement. Customer must provide Siemens with prompt written notice of any change in ownership, change in control or operations or any other change which would affect the ordering, shipment, invoicing or payment of Products. Siemens may assign its right to receive payment under any Supplement to one or more assignees (collectively, the "Assignees").

19) DISCLOSURE OF DISCOUNTS. Customer acknowledges that discounts, rebates, credits, free goods or services, coupons or other things of value which Customer may receive from Siemens under this Agreement or any Supplement constitute a discount or reduction in price for purposes of 42 U.S.C. paragraph 1320a-7b(b)(3)(A) ("Discounts"). Customer further acknowledges that the cost of Customer's use of the Equipment listed in a Supplement is included in the pricing under such Supplement. Customer agrees to file all appropriate reports and to properly disclose and reflect all Discounts in any report filed in connection with state or federal cost reimbursement programs.

20) PAYMENT OBLIGATION. (a) Customer is required to make payments for the Equipment in accordance with the applicable Supplement even if Customer has a claim against Siemens. (b) Customer is not entitled to reduce or set-off for any reason any amounts against Customer's payment obligations under any Supplement. (c) Customer may not assert any claims or defenses Customer has against Siemens against any Assignee. Customer's obligation to make such payments to any Assignee is unconditional and is not subject to any claims, defenses or rights. (d) Customer's obligation to pay and perform all of Customer's obligations under this Agreement and any Supplement will continue even if the Equipment is lost, damaged, stolen or destroyed. (e) THIS IS A FINANCE LEASE OF THE EQUIPMENT FOR PURPOSES OF ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE.

21) ENTIRE AGREEMENT; AMENDMENTS. Each Supplement (as incorporating the terms and conditions of this Agreement) sets forth the entire agreement between the parties relating to the subject matter herein and there are no understandings, agreements, or representations expressed or implied not stated herein and therein, including by reason of any terms or conditions of any agreement ("Group Purchasing Agreement") between Siemens and a group purchasing organization ("GPO"). Notwithstanding the foregoing, as between Customer and Siemens, Customer may still be entitled to certain benefits pursuant to the terms of a Group Purchasing Agreement between Siemens and a GPO by virtue of Customer's membership in such GPO provided that Customer is an active member of the GPO and the Group Purchasing Agreement is in full force and effect. To that end, in the event of any conflict or inconsistency between the terms of any Supplement (as incorporating the terms and conditions of the Agreement) and the terms of such Group Purchasing Agreement, (a) if the conflict or inconsistency is regarding a payment or financial obligation, then the term of this Agreement shall control and (b) if the conflict or inconsistency is regarding any other term or condition (not regarding

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SIEMENS

a payment or financial obligation), then the terms and conditions of the Group Purchasing Agreement shall control. Customer shall get the benefit of such Group Purchasing Agreement only so long as it does not affect any of the Customer's payment or other obligations with respect to Equipment or any of the rights or remedies of Siemens (or any Assignee) with respect thereto. Neither the Agreement or any Supplement shall be terminated (except termination in the event of a Default) or modified except by a written document signed by authorized representatives of all parties making specific reference to this Agreement or Supplement, as applicable, and expressing the intention to modify or terminate. Any modifications contained or incorporated into a Supplement that in any way alter the terms of the Agreement shall be effective only with the respect to that Supplement and shall be ineffective with respect to any other Supplement. Any term or condition contained in a Customer purchase order relating to Products supplied under a Supplement shall be null and void.

22) MISCELLANEOUS. (a) If Siemens fails to enforce its rights against Customer at any time, it may enforce those rights later without waiver or at such other time that Customer fails to perform any of Customer's obligations.

(b) Customer agrees not to disclose the prices or the terms and conditions of Customer's purchases under this Agreement to any person except as required by law.

(c) TO THE EXTENT PERMITTED BY LAW: (i) THE PARTIES HERETO AGREE TO WAIVE ALL RIGHTS TO A JURY TRIAL IN ANY LITIGATION ARISING FROM OR RELATED IN ANY WAY TO THE AGREEMENT OR THE TRANSACTION CONTEMPLATED HEREBY; (ii) CUSTOMER WAIVES ANY AND ALL RIGHTS AND REMEDIES CONFERRED UPON IT BY ARTICLE 2A OF THE UNIFORM COMMERCIAL CODE (IF DEEMED APPLICABLE), AND; (iii) CUSTOMER WAIVES ALL RIGHTS IT MAY HAVE TO LIMIT OR MODIFY ANY OF SIEMENS' RIGHTS AND REMEDIES HEREUNDER.

(d) Customer and Siemens will send any required notices to the other parties by registered or certified mail or by recognized overnight courier service. All notices will be sent to the applicable party at the address set forth herein. A party may designate an alternate address for notices by giving written notice thereof in accordance with the provisions of this Section.

IN WITNESS HEREOF, each party has caused its duly authorized representative to execute this Agreement as of the Effective Date.

Customer:

By: _____

Name (print): _____

Title: _____

Date: _____

Siemens Healthcare Diagnostics Inc.:

By: _____

Name (print): _____

Title: _____

Date: _____

Address: 115 Norwood Park South, Norwood, MA 02062

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SUPPLEMENT TO MASTER EQUIPMENT AND PRODUCTS AGREEMENT

Product Line: Syva

Pricing Option: Standard

Legal Name:	CUYAHOGA COUNTY, OH	Group Purchasing Organization (GPO):	NO PRIMARY
Customer Name:	CUYAHOGA CNTY CORONERS OFFICE	Federal ID #:	
Address:	11001 CEDAR AVE	Sold to Customer #:	146902
City, State, Zip:	CLEVELAND, OH 44106		

THIS SUPPLEMENT ("Supplement") to the Master Equipment and Products Agreement dated _____ is by and between Siemens Healthcare Diagnostics Inc. ("Siemens") and the party identified under "Legal Name" (or "Customer Name" if no "Legal Name") in the heading above ("Customer") (the "Agreement") incorporates the terms and conditions of the Agreement. The party providing the financing for the lease of the Equipment is referred to herein as "Siemens". Capitalized but undefined terms will have the meanings ascribed to them in the Agreement. For all purpose hereof, this Supplement is effective as of the date of Siemens' execution ("Supplement Effective Date").

1) EQUIPMENT. Siemens agrees to lease to Customer, for Customer's use at the address Customer has provided above (the "Premises"), the Equipment set forth in Attachment A, attached hereto and made a part hereof.

Billing Address (if different from address of the Premises): _____

2) PRODUCTS. Customer agrees to purchase from Siemens on a periodic basis during each year of the Supplement Term, but no less frequently than every ninety (90) days, the Products listed on Attachment A at the prices specified on Attachment A.

3) PRODUCT INVOICING. Customer will be invoiced upon shipment of Products.

4) COMMITMENT; AMOUNT ALLOCABLE TO THE EQUIPMENT. The Commitment Amount is specified on Attachment A. The prices for Products contained in this Supplement may include the use of the Equipment, Service and training. If so, Customer acknowledges Siemens has provided it the opportunity to separately purchase each for its stated cost which is available to Customer and that Siemens, as the owner of the Equipment, has an interest in the pricing. The portion of the Commitment Amount allocable to the Equipment is \$ 195 per month.

5) TERM. This Supplement is effective as of the Supplement Effective Date. The Supplement Term is 36 months beginning thirty (30) days after delivery of the Equipment.

6) PRICING TERMS. The pricing under this Supplement applies only to the Equipment and Products that are used by Customer at the Premises. The pricing and other terms stated in this Supplement supersede any previous price arrangements Customer has with Siemens or any Group Purchasing Agreements. Siemens reserves the right to increase the then-current pricing on a periodic basis or as otherwise permitted under the terms of this Supplement (such increases are referred to herein as "Price Increases").

7) END OF TERM PURCHASE OPTION. If Customer has purchased the Commitment Amount for the full Supplement Term and is not in Default of any of its obligations under the Agreement or this Supplement, then upon the expiration of the Supplement Term, Customer may purchase the Equipment for its fair market value (as determined by Siemens). If Customer does not purchase the Equipment or re-lease it through a new supplement, then Customer shall return the Equipment to Siemens within sixty (60) days after the end of the Supplement Term, freight prepaid and in accordance with any other written directions provided to Customer by Siemens. If Customer does not provide notice of its intent to return, purchase, or re-lease the Equipment at least sixty (60) days prior to the end of the Supplement Term, this Supplement shall automatically renew on a month-to-month basis until either party provides thirty (30) days written notice of termination.

8) TRAINING. Siemens will provide training at the location and for the number of people specified on Attachment A.

9) SERVICE. If Service is specified on Attachment A, a Siemens appointed service representative will provide Service in accordance with the type of service and for the Service Period specified on Attachment A.

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10) ENTIRE AGREEMENT; AMENDMENTS. All of the terms, covenants and conditions set forth in the Agreement are incorporated herein by reference as if the same had been set forth herein and there are no understandings, agreements, or representations expressed or implied not stated herein. If there is a conflict between the terms of this Supplement and the Agreement, the terms of this Supplement (including any Attachment(s) and Exhibit(s)) shall prevail.

11) FREIGHT. Freight will be charged as set forth in the applicable Group Purchasing Agreement.

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IN WITNESS HEREOF, each party has caused its duly authorized representative to execute this Supplement as of the Supplement Effective Date.

Sales Representative (Print Name)

Quote #: **5EU-1EXJ** Approved: **10/16/2012**

CUSTOMER (use blue ink):

SIEMENS HEALTHCARE DIAGNOSTICS INC.

By: _____

By: _____

Name(print): _____

Name(print): _____

Title: _____

Title: _____

Date: _____

Date: _____

Address: 115 Norwood Park South, Norwood, MA 02602

9000

Legal Name: CUYAHOGA COUNTY, OH
Customer: CUYAHOGA CNTY CORONERS OFFICE
Purchasing Group: NO PRIMARY

Sold To: 146902

Equipment Information:

Equipment	Catalog #	Onsite	Quantity	Comments
Viva-Jr	6002-940	Y	1	

Service and Training

Equipment: Viva-Jr

Service Type	Service Level	Quantity	Start Yr	# of Yrs	Total Annual
Extended Service	PLUS	1	1	3	Included

Products: Reagents Pricing

Reagent	Catalog #	Cost/Test	Cost/Kit	Total Kits/Yr	Total Annual
DAT Group V Plus					
Emit II Plus Amphetamine Reagent Kit - 30mL	9C039UL	\$1.700	\$221.00	6	\$1326.00
Emit II Plus Benzodiazepine Reagent Kit - 30mL	9F039UL	\$1.700	\$238.00	6	\$1428.00
Emit II Plus Cocaine Reagent Kit - 30mL	9H039UL	\$1.700	\$238.00	6	\$1428.00
Emit II Plus Opiate Reagent Kit - 30mL	9B039UL	\$1.700	\$238.00	6	\$1428.00
Emit II Plus PCP Reagent Kit - 30mL	9J039UL	\$1.700	\$238.00	6	\$1428.00
Emit II Plus THC Reagent Kit - 30mL	9N039UL	\$1.700	\$238.00	6	\$1428.00
DAT Group V Plus Total Annual				36	\$8,466.00

Products: Supplies

Supply	Catalog #	Cost/Kit	Total Kits/Yr	Total Annual
.1 Normal HCL	5621-02	\$34.22	1	\$34.22
.1 Normal NAOH	5636-02	\$40.00	1	\$40.00
13 x 75 Polypropylene Tubes (500 per pak)	55.525	\$25.00	3	\$75.00
Bottle 15ml (20 per Pak)	3A009	\$20.00	1	\$20.00
Bottle 30ml (20 per pak)	3A019	\$20.00	1	\$20.00
Emit Calibrator/Control Lvl 0	9A509UL	\$75.00	4	\$300.00
Emit Calibrator/Control Lvl 1	9A529UL	\$75.00	4	\$300.00
Emit Calibrator/Control Lvl 2	9A549UL	\$75.00	4	\$300.00
Emit Calibrator/Control Lvl 3	9A569UL	\$75.00	4	\$300.00
Emit Calibrator/Control Lvl 5	9A609UL	\$75.00	4	\$300.00
Mixer Belt	3064-041	\$25.00	1	\$25.00
Reaction Rotor	6002-706	\$64.24	1	\$64.24
Sample Cups, (1000 cups)	256923.001	\$34.18	2	\$68.36
Sodium Hypochlorite Solution	7668	\$25.95	1	\$25.95
System solution	3203-063	\$51.78	1	\$51.78
Total Annual Supplies			33	\$1,924.55

Prices for Reagents and Supplies not listed above will be according to Standard List in effect at the time of shipment.

Prices for Reagents and Supplies not yet commercially available will be determined at the time of introduction and are not covered by this Agreement.

Total annual minimum Commitment Amount \$10,390.55

Agreed to and accepted this _____

day of _____ 20 _____

Customer:**Siemens Healthcare Diagnostics Inc.**_____
By: (Signature)_____
By: (Signature)_____
By: (Print)_____
By: (Print)_____
Title_____
Title

This document contains confidential and proprietary commercial and/or financial information of Siemens Healthcare Diagnostics Inc. Use or disclosure of this information for any purpose other than that for which it has been provided may cause substantial competitive harm to Siemens Healthcare Diagnostics Inc. and is prohibited.

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Customer Number: 146902

AMENDMENT to the SUPPLEMENT to the MASTER EQUIPMENT AND PRODUCTS AGREEMENT

THIS AMENDMENT to the Supplement dated _____ to the Master Equipment and Products Agreement between Siemens Healthcare Diagnostics Inc. ("Siemens and **CUYAHOGA COUNTY, OH d/b/a CUYAHOGA CNTY CORONERS OFFICE**" ("Customer") is made effective _____ ("Effective Date").

WHEREAS, Customer and Siemens desire to amend the Supplement as set forth below in order that the Supplement, as amended, is acceptable to both parties for execution;

NOW THEREFORE, in consideration of the terms and conditions contained herein, the parties agree the Supplement shall be amended as follows:

1. **Refinance.** This Supplement includes a refinancing of the following equipment that Customer has been leasing from Siemens pursuant to a Dade Behring Easy Access Agreement dated 12/6/2007: Viva-Jr, s/n 6-9474 (the "Refinanced Equipment").
2. **Waived Shortfall.** The parties were entered into a separate Dade Behring Easy Access Agreement dated 12/6/2007 (the "Previous Agreement") and Customer fell short of purchasing the Commitment Amount by fifty two thousand nine hundred seventy five dollars (\$52,975) (the "Shortfall") during the Previous Agreement. In consideration for Customer entering into this new Supplement, Siemens agrees to waive the Shortfall; however, Customer agrees that if there is any Default or failure to pay for any reason under this Supplement, then, in addition to any other remedies Siemens may have against Customer under this Supplement, Customer agrees to promptly reimburse Siemens for the Shortfall.
3. **Term.** The language in Paragraph 5 of the Supplement that currently reads: "This Supplement is effective as of the Supplement Effective Date. The Supplement Term is 36 months beginning thirty (30) days after delivery of the Equipment." **is hereby amended to read:** "This Supplement is effective as of the Supplement Effective Date and remains in effect for 36 months ("Supplement Term").

All other terms and conditions of the Supplement remain unchanged and in full force and effect.

IN WITNESS WHEREOF, each party hereto has caused its duly authorized representative to execute this Amendment to the Supplement to the Master Equipment and Products Agreement as of the Effective Date.

CUSTOMER:

Siemens Healthcare Diagnostics Inc.:

By:

By:

Name(print):

Name(print):

Title:

Title:

Date:

Date:

Siemens Healthcare Diagnostics Inc.

Quote #5EU-1EXJ

115 Norwood Park South
Norwood, MA 02062
USA

(781) 551-7000
www.siemens.com/diagnostics