

## **AGREEMENT FOR SOLE SOURCE PURCHASE**

**THIS CONTRACT**, made and entered into by and between the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**, by and through its **DEPARTMENT OF CORRECTIONS**, herein referred to as “**METRO GOVERNMENT**”, and **VIRTUAL IMAGING, INC.** with offices located at 5600 Broken Sound Boulevard, Boca Raton, Florida 33487, herein referred to as “**CONTRACTOR**”,

### **WITNESSETH:**

**WHEREAS**, the Metro Government wishes to purchase service, maintenance and repair of RadPro and SecurPASS full body security screening system; and

**WHEREAS**, the Contractor has been determined by the Metro Government to be a sole source to provide that service and support,

**NOW, THEREFORE**, it is agreed by and between the parties hereto as follows:

#### **I. SCOPE OF SERVICES**

**A.** Contractor shall, at the request of the Metro Government, provide services set forth herein and under the terms of this Agreement.

**B.** The services of Contractor shall include but not be limited to the following:

- 1.** Those described on Attachment A attached hereto and fully incorporated herein by reference. In the event of a conflict between the terms and conditions of this Agreement and Attachment A, the terms and conditions of this Agreement shall control.

#### **II. FEES AND COMPENSATION**

**A.** The Metro Government shall pay Contractor for services rendered pursuant to and as described in Attachment A. Total compensation payable to Contractor for services rendered pursuant to this Agreement shall not exceed **SEVENTY FIVE THOUSAND DOLLARS (\$75,000.00)** unless otherwise agreed to by the parties in writing.

B. The Metro Government shall not reimburse out of pocket expenses under this Agreement except as set forth in Attachment A.

**III. DURATION**

A. This Agreement shall begin April 24, 2015 and shall continue through and including April 23, 2018.

**IV. INSURANCE REQUIREMENTS**

Insurance coverage shall be required of Contractor in accordance with Attachment B attached hereto.

**V. REPORTING OF INCOME**

The compensation payable under this Agreement may be subject to federal, state and local taxation. Regulations of the Internal Revenue Service require the Metro Government to report all amounts in excess of \$600.00 paid to non-corporate contractors. Contractor agrees to furnish the Metro Government with its taxpayer identification number (TIN) prior to the effective date of this Agreement. Contractor further agrees to provide such other information to the Metro Government as may be required by the IRS or the State Department of Revenue.

**VI. AUTHORITY**

The Contractor, by execution of this Agreement, does hereby warrant and represent that he is qualified to do business in the State of Kentucky, has full right, power and authority to enter into this Agreement.

**VII. CONFLICTS OF INTEREST**

Pursuant to KRS 45A.455 and applicable to Metro personnel only:

(1) It shall be a breach of ethical standards for any employee with procurement authority to participate directly in any proceeding or application; request for ruling or other determination; claim or controversy; or other particular matter pertaining to any contract, or subcontract, and any solicitation or proposal therefor, in which to his knowledge:

(a) He, or any member of his immediate family has a financial interest therein;

or

(b) A business or organization in which he or any member of his immediate family has a financial interest as an officer, director, trustee, partner, or employee, is a party; or

(c) Any other person, business, or organization with whom he or any member of his immediate family is negotiating or has an arrangement concerning prospective employment is a party. Direct or indirect participation shall include but not be limited to involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity.

(2) It shall be a breach of ethical standards for any person to offer, give, or agree to give any employee or former employee, or for any employee or former employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment, in connection with any decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or purchase standard, rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application, request for ruling or other determination, claim or controversy, or other particular matter, pertaining to any contract or subcontract and any solicitation or proposal therefor.

(3) It is a breach of ethical standards for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

(4) The prohibition against conflicts of interest and gratuities and kickbacks shall be conspicuously set forth in every local public agency written contract and solicitation

therefor.

(5) It shall be a breach of ethical standards for any public employee or former employee knowingly to use confidential information for his actual or anticipated personal gain, or the actual or anticipated personal gain of any other person.

#### **VIII. ENTIRE AGREEMENT**

This Agreement, together with Attachment A, constitutes the entire agreement and understanding of the parties with respect to the subject matter set forth herein and this Agreement supersedes any and all prior and contemporaneous oral or written agreements or understandings between the parties relative thereto. No representation, promise, inducement, or statement of intention has been made by the parties that is not embodied in this Agreement. This Agreement cannot be amended, modified, or supplemented in any respect except by a subsequent written agreement duly executed by all of the parties hereto. In the event of a conflict between the terms of this Agreement and the terms in any of the Attachments, this Agreement shall govern.

#### **IX. SUCCESSORS**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

#### **X. SEVERABILITY**

If any court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision hereunder.

#### **XI. COUNTERPARTS**

This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original and all executed counterparts shall constitute one and the same instrument.

**XII. CALCULATION OF TIME** Unless otherwise indicated, when the performance or doing of any act, duty, matter, or payment is required hereunder and a period of time or duration for the fulfillment of doing thereof is prescribed and is fixed herein, the time shall be computed so as to exclude the first and include the last day of the prescribed or fixed period of time. For example, if on January 1, Contractor is directed to take action within ten (10) calendar days, the action must be completed no later than midnight, January 11.

**XIII. CAPTIONS** The captions and headings of this Agreement are for convenience and reference purposes only and shall not affect in any way the meaning and interpretation of any provisions of this Agreement.

**XIV. VIOLATIONS OF AND COMPLIANCE WITH KENTUCKY LAWS** The Contractor shall reveal any final determination of a violation by the Contractor or subcontractor within the previous five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor. The Contractor shall be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 that apply to the Contractor or subcontractor for the duration of the contract.

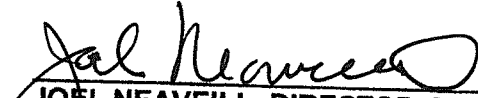
WITNESS the agreement of the parties hereto by their signatures affixed hereon.

APPROVED AS TO FORM AND  
LEGALITY CONTINGENT  
UPON APPROVAL OF  
OF THE APPROPRIATION FOR  
THIS CONTRACT BY THE  
METRO COUNCIL

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

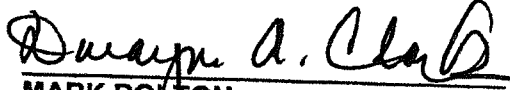
  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

Date: 6/29/17

  
JOEL NEAVEILL, DIRECTOR, PURCHASING  
DEPARTMENT

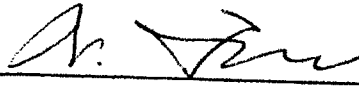
Date: 7/14/17

DEPARTMENT OF CORRECTIONS

  
MARK BOLTON  
DIRECTOR

Date: 7/13/2017

VIRTUAL IMAGING, INC.

By:  NOBUHIRO TOGAWA

Title: VP, Business Operations

Date: 7/10/2017

Taxpayer Identification No.  
(TIN): \_\_\_\_\_

Louisville/Jefferson County  
Revenue Commission Account  
No.: \_\_\_\_\_



**ATTACHMENT A**

## ATTACHMENT B

### INSURANCE REQUIREMENTS FOR INDEPENDENT CONTRACTORS

#### I. INSURANCE REQUIREMENTS

Prior to commencing work, Contractor shall obtain at its own cost and expense the following types of insurance through insurance companies licensed in the State of Kentucky. Insurance written by non-admitted carriers will also be considered acceptable, in accordance with Kentucky Insurance Law (KRS 304.10-040). Workers' Compensation written through qualified group self-insurance programs in accordance with Kentucky Revised Statutes (KRS 342.350) will also be acceptable. The Contractor shall not commence work under this Contract until all insurance required under the Contract Document has been obtained and until copies of policies or certificates thereof are submitted to the **Office of Management and Budget**, and approved by the Louisville/Jefferson County Metro Government's Risk Management Division. The Contractor shall not allow any subcontractor to commence work until the insurance required of such subcontractor has been obtained and copies of Certificates of Insurance retained by Contractor evidencing proof of coverages.

Without limiting Contractor's indemnification requirements, it is agreed that Contractor shall maintain in force at all times during the performance of this agreement the following policy or policies of insurance covering its operations, and require subcontractors, if subcontracting is authorized, to procure and maintain these same policies until final acceptance of the work by the Louisville/Jefferson County Metro Government (Metro). Metro may require Contractor to supply proof of subcontractor's insurance via Certificates of Insurance, or at Metro's option, actual copies of policies.

#### A. The following clause shall be added to the Contractor's (and approved subcontractors) Commercial General Liability Policies:

1. "The Louisville/Jefferson County Metro Government, its elected and appointed officials, employees, agents and successors are added as an "Additional Insured" as respects operations of the Named Insured performed relative to the contract."

B. The insurance to be procured and maintained and **minimum** Limits of Liability shall be as follows, unless different limits are specified by addendum to the contract (and such minimum limits shall not limit access to the full amount of insurance available (whether through primary, excess or umbrella policies) on Contractor's or subcontractors policy(ies), if that/those policy(ies) provide for Limits above the minimum):

1. **COMMERCIAL GENERAL LIABILITY**, via the **Occurrence Form**, primary, noncontributory, with a **\$1,000,000** Combined Single Limit for any one Occurrence and **\$2,000,000** aggregate for Bodily Injury, Personal Injury, Property Damage, and Products/Completed Operations including:
  - a. Premises - Operations Coverage
  - b. Products and Completed Operations
  - c. Contractual Liability
  - d. Broad Form Property Damage
  - e. Independent Contractors Protective Liability
  - f. Personal Injury



2. **AUTOMOBILE LIABILITY**, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is **\$1,000,000** Combined Single Limit for any one accident. The Limit of Liability may be subject to increase according to any applicable State or Federal Transportation Regulations.
3. **WORKERS' COMPENSATION** insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and **EMPLOYERS' LIABILITY - \$100,000** Each Accident/**\$500,000** Disease - Policy Limit/**\$100,000** Disease - Each Employee.

## II. ACCEPTABILITY OF INSURERS

Insurance is to be placed with Insurance Companies with an A. M. Best Rating of no less than "A- VI", unless proper financial information relating to the Company is submitted to and approved by Metro's Risk Management Division.

## III. MISCELLANEOUS

A. The Contractor shall procure and maintain insurance policies as described herein and for which the **Office of Management and Budget** shall be furnished Certificates of Insurance upon the execution of the Contract. The Certificates shall include the name and address of the person executing the Certificate of Insurance as well as the person's signature. If policies expire before the completion of the Contract, renewal Certificates of Insurance shall be furnished to Metro at least 15 days prior to the expiration of any policy(s).

B. **The Certificates of Insurance as required above shall be furnished to:**

Louisville/Jefferson County Metro Government  
Office of Management and Budget  
Risk Management Division  
611 West Jefferson Street  
Louisville, Kentucky 40202

C. **CANCELLATION OR MATERIAL CHANGE OF COVERAGE: Contractor shall notify Metro's Risk Management Division of any policy cancellation within two (2) business days of its receipt of same. Upon any material change (changes that reduce/restrict limit or terms and conditions to your insurance coverage) in coverage as required above, Contractor shall notify Metro's Risk Management Division within two (2) business days. If Contractor fails to notify Metro as required by this Agreement, Contractor agrees that such failure shall be a breach of this Agreement. Metro reserves the right to require the insurance policy(s) required above to be specifically endorsed to provide notice of cancellation and/or material change of coverage in accordance with policy provisions. When requested by the Metro Government, a copy of the policy endorsement shall be provided to Metro's Risk Management Division.**

D. Approval of the insurance by Metro shall not in any way relieve or decrease the liability of the Contractor hereunder. It is expressly understood that Metro does not in any way represent that the specified Limits of Liability or coverage or policy forms are sufficient or adequate to protect the interest or liabilities of the Contractor.



**Service Agreement (the "Agreement")**  
Contract: SVC # 032517DW

This Agreement is entered into by and between  
**Virtual Imaging, Inc. and Louisville Municipal Jail (the "Customer")**

**Equipment Address:**  
400 S. Sixth Street  
Louisville, KY 40202  
Director: Mark Bolton

**Billing Address:**  
Same as Equipment Address

**Equipment Type:** See Exhibit A - Equipment Management Form, a copy of which is attached hereto and made a part hereof.

Virtual Imaging, Inc. ("Virtual Imaging") and Louisville Municipal Jail agree that Virtual Imaging shall furnish service to the Customer for the Equipment listed on Exhibit A - Equipment Management Form, subject to the terms and conditions herein and on the included Exhibit B - Terms and Conditions (a copy of Exhibit A - Equipment Management Form, and Exhibit B - Terms and Conditions are attached hereto and made a part hereof). The term of this Agreement shall begin on 4/24/15 and end on 4/23/18 (the "Term").

**Total Annual Price:** **\$25,000.00 / year** (Plus Applicable Tax)

**Total 3 Year Price:** **\$75,000.00 / 3 years** (Plus Applicable Tax)


**Price Includes:** See attached Exhibit A - Equipment Management Form

**Billing:** Customer will be billed \$75,000.00 for period of 3 years beginning 04/24/15 and ending on 04/23/18. Invoices are due and payable within thirty (30) days of the invoice date.

By execution of this Agreement by an authorized signatory, Customer acknowledges and agrees that it has read, understands and accepts the terms and conditions of this Agreement, including the attached Exhibit A - Equipment Management Form and Exhibit B - Terms and Conditions (which are attached hereto and made a part of this Agreement).

**Acceptance Signature:**  
Customer:

Virtual Imaging:

  
Customer Signature \_\_\_\_\_ 7/14/17  
Date

  
Nobuhiro Togawa / Vice President \_\_\_\_\_ 7/10/2017  
Date

This Agreement is subject to and contingent upon Virtual Imaging's inspection of the Equipment. If such Equipment is not up to acceptable standard, as determined by Virtual Imaging in its sole determination, or there is any pre-existing conditions, Customer will be billed at Virtual Imaging's normal time and material rates to be provided by Virtual Imaging at the time of such inspection.

Accounting \_\_\_\_\_ Date: \_\_\_\_\_ Melissa Leslie, Accounting Manager  
Number \_\_\_\_\_

**EXHIBIT A  
EQUIPMENT MANAGEMENT FORM  
Louisville Municipal Jail – SVC # 032517DW**

Equipment Identifiers VI Inventory # S/N #	Equipment	Options	Plan	Effective Date	Annual \$
Serial # 122	RadPRO SecurPASS	Includes: Monoblock and glassware for first year due to special circumstances. Future contracts will have separate options for these items.	Contract Coverage Hours (Mon-Fri – 8am – 5pm) No Company Observed Holidays Parts and Labor 2 PM per year coverage within contract hours	4/24/15 – 4/23/18	\$12,500.00
Serial # 198	ConPass	Includes: Monoblock and glassware for first year due to special circumstances. Future contracts will have separate options for these items.	Contract Coverage Hours (Mon-Fri – 8am – 5pm) No Company Observed Holidays Parts and Labor 2 PM per year coverage within contract hours	4/24/15 – 4/23/18	\$12,500.00
PLEASE SEE TERMS AND CONDITIONS ATTACHED HERETO AND MADE A PART HEREOF FOR PARTS AND SERVICES NOT COVERED.				<b>Standard Plan Cost</b>	<b>\$25,000.00</b>
				<b>Total Cost</b>	<b>\$75,000.00</b>

Initials: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Virtual: \_\_\_\_\_  
 Date: \_\_\_\_\_

## Exhibit B Terms and Conditions

**Service** –Virtual Imaging, Inc. (“Virtual Imaging”) will provide to Customer, subject to the terms and conditions set forth herein or elsewhere in the Agreement, preventive maintenance (which encompasses cleaning, lubrication and adjustments) and repair service (hereinafter collectively referred to as “Service”) for the equipment listed on Exhibit A - Equipment Management Form of the Agreement (the “Equipment”) to keep such Equipment in good working order in accordance with these terms and conditions and Virtual Imaging’s normal practice.

**Exclusion from Service** - Virtual Imaging will not be obligated to perform Service on any Equipment damaged as a result of (i) any willful act, tampering, negligence, abuse or misuse of the Equipment; (ii) Service performed on the Equipment by anyone other than Virtual Imaging personnel or a third-party who has been expressly authorized by Virtual Imaging to perform such Service on its behalf; or (iii) power failures or modifications, operator error, fire, water damage, or an act of God. Customer will provide Virtual Imaging clear and safe access to the Equipment for purposes of providing Service hereunder and will maintain a safe working environment for Virtual Imaging’s service representative to perform such Services.

**Additional Exclusions** –Consumable parts or supplies, including, but not limited to, batteries, glassware (which may include, but is not limited to, X-ray tubes, image intensifiers, and camera tubes), bulbs, styli, and any other parts or supplies that are replaced due to normal operation, or any other items which may be expressly excluded as noted on Page 1 of the Agreement or Exhibit A – Equipment Management Form of the Agreement, are not covered under this Agreement. Software (which includes, but is not limited to operating software, diagnostic software and firmware) is not covered under this Agreement. Notwithstanding the foregoing, during the term of this Agreement, Virtual will provide updates for RadPRO and Canon software products which Virtual Imaging sold to Customer. If for any reason Virtual Imaging is unable to obtain parts to Service the Equipment, Virtual Imaging may, without liability, cancel any balance of the term of the Agreement as to such Equipment and refund the unearned portion of any prepaid charges made pursuant to the Agreement. If the cost of a part needed to Service the Equipment exceeds fifty percent (50%) of the Equipment’s fair market value, such part will not be covered. Equipment or parts replaced or removed by Virtual Imaging in connection with its performance of the Services pursuant to the Agreement will become the sole property of Virtual Imaging, and Customer hereby disclaims any and all interest therein. Virtual Imaging may, without liability, terminate the Agreement if Customer relocates the Equipment from the present Facility (as defined below) or removes or deletes any Equipment from Exhibit A without Virtual Imaging’s prior written consent, which consent may be withheld in Virtual Imaging’s sole discretion.

**Hours of Service** – Unless Virtual Imaging agrees in its sole discretion in writing to the contrary, Service (including preventative maintenance) will be provided during normal business hours, (Monday through Friday, 8:00 AM -5:00 PM local time at Customer’s location as identified on Page 1 of the Agreement (the “Facility”), excluding Virtual Imaging observed Holidays - a list of Virtual Imaging observed Holidays will be provided to Customer upon Customer’s written request). Service after normal business hours (8:00 AM – 5:00 PM local time/Customer Facility), on weekends or on Virtual Imaging observed Holidays may, in Virtual Imaging’s sole discretion and determination, be provided, but such Service will be billed as overtime at a rate of one and one-half (1.5) times Virtual Imaging’s current billing rate. Preventative maintenance can take up to four (4) hours to complete. Therefore, preventative maintenance will not begin later than 1:00 PM local time/Customer Facility and must be scheduled in advance for a time that is mutually agreeable to Customer and Virtual Imaging. Virtual Imaging reserves the right to withhold or discontinue Service if timely payment is not made as required by the Agreement.

While no assurances can be given, Virtual Imaging will endeavor to (i) return all calls for Service received after 8:00 AM but prior to 3:00 PM Customer Facility local time within two hours after the call has been received by Virtual Imaging’s Call Center (561-893-8500) (Calls received after 3:00 PM Customer Facility local time will result in a return call the next morning.) and (ii) dispatch a Service representative on site within six (6) hours of the call being received by Virtual Imaging’s Call Center during the hours specified above (Calls received after 11:00 AM Customer Facility local time may result in a service representative being dispatched the following morning.)

**Charges** - Customer will be billed in advance for the upcoming quarter and payment is due prior to the first day of the applicable quarter. Applicable taxes will be added to the charges and reflected in the invoice sent to Customer. Prepaid charges will not be refundable except as provided in the section entitled “Additional Exclusions” above. Customer will be placed on COD status if payment is not received on the due date. A late charge of one and one-half percent (1.5%) per month (or the maximum legal interest rate allowed by applicable law, if less) will be assessed for payments not received by the due date. Additionally, Virtual Imaging may withhold Service under the Agreement in whole or in part until any delinquent payment is received by Virtual Imaging. If payment is delinquent and cannot be collected on demand, Customer agrees to pay all costs and expenses incurred by Virtual Imaging, including reasonable attorney’s fees and court costs, in connection with Virtual Imaging’s efforts to collect any payment due by Customer pursuant to the Agreement. Customer will be responsible for all state, local or excise taxes levied on service or sales during the period of the Agreement. If Customer is tax-exempt, a current tax-exemption certificate must be provided to Virtual Imaging immediately upon execution by Customer of the Agreement.

**Term and Termination** – The Term of the Agreement is set forth on the first page of the Agreement. Either party may terminate the Agreement in the event that the other party materially breaches any of the terms or conditions of the Agreement and fails to cure said breach within thirty (30) days after its receipt from the non-breaching party of written notice outlining such breach. Notification of the breach must be sent by the non-breaching party to the breaching party via a nationally recognized overnight carrier service. Material breach, for purposes of this Agreement, means a breach of any term or condition of the Agreement, including, without limitation, Customer’s timely payment of all amounts due under the Agreement. Notwithstanding the foregoing, Virtual Imaging will have the right to immediately terminate the Agreement as further provided in the

section entitled "Additional Exclusions." In the event that Customer terminates the Agreement for any reason other than due solely to Virtual Imaging's material breach, Customer will be required to immediately pay to Virtual Imaging the remaining quarterly charges due for the balance of the Term and any other charges due and owing under the Agreement, and Customer agrees that in addition to such payment, Virtual Imaging will be entitled to recover any other damages available to it at law or equity as a result of or in connection with such termination.

**EXCLUSION OF WARRANTIES AND LIMITATION OF LIABILITY – VIRTUAL IMAGING EXPRESSLY DISCLAIMS ALL WARRANTIES EXPRESS OR IMPLIED INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RELATING TO THE USE OR PERFORMANCE OF THE EQUIPMENT. CUSTOMER EXPRESSLY ACKNOWLEDGES AND AGREES THAT THE FURNISHING OF SERVICE BY VIRTUAL IMAGING PURSUANT TO THE AGREEMENT DOES NOT ASSURE UNINTERRUPTED OPERATION AND USE OF THE EQUIPMENT. VIRTUAL IMAGING WILL NOT BE LIABLE FOR PERSONAL INJURY OR PROPERTY DAMAGE UNLESS CAUSED DIRECTLY BY VIRTUAL IMAGING'S NEGLIGENCE OR WILLFUL MISCONDUCT. THE LIABILITY OF VIRTUAL IMAGING ARISING UNDER OR BY REASON OF THE AGREEMENT WILL IN NO EVENT EXCEED THE FEE OR AMOUNT RECEIVED BY VIRTUAL IMAGING FROM CUSTOMER FOR THE SERVICE WHICH CAUSES ANY SUCH LIABILITY. IN NO EVENT WILL VIRTUAL IMAGING BE LIABLE FOR DAMAGES SUCH AS LOST INCOME OR LOST PROFITS, LOST DATA, OR ANY OTHER DIRECT, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR EXEMPLARY DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY (WHETHER CONTRACT, STRICT LIABILITY OR TORT), IN ANY WAY ARISING OUT OF THE AGREEMENT OR THE SERVICES PROVIDED AND NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY REMEDY. No action arising out of or related to the Agreement, regardless of the form of action, may be brought by Customer more than one (1) year after the action occurred.**

**No Assignment –** Customer will inform Virtual Imaging promptly in writing of any change of name, change of any office location, or change of legal form of its business. Customer cannot assign the Agreement without Virtual Imaging's prior written consent (which consent will be in Virtual Imaging's sole discretion), and any attempted assignment without such consent will be void.

**Restrictions on Hiring Employees -** Customer acknowledges that Virtual Imaging has invested considerable amounts of time and money in training its employees in the systems, procedures, methods, forms, reports, formulas, computer programs, plans, techniques and other valuable information that are proprietary and unique to Virtual Imaging's manner of conducting its business and that Virtual Imaging makes such information available to its employees, its parent and its affiliates, on a confidential basis. Therefore, Customer agrees that no employees of Virtual Imaging, its parent or its affiliates, will be hired by Customer or its subsidiaries, affiliates or facilities for the Term of the Agreement and twelve (12) months thereafter, and that Customer will not permit any employees of Virtual Imaging, its parent or its other affiliates to provide services for any Customer or any of its subsidiaries, affiliates or facilities indirectly (through consulting contracts, contracts with third parties that employ or otherwise retain any Virtual Imaging employees, or otherwise) for the Term of the Agreement and twelve (12) months thereafter. Customer agrees that if Customer or any of its subsidiaries, affiliates or facilities violates the conditions set forth in this Section, Customer will pay to Virtual Imaging, and Virtual Imaging will accept as liquidated damages and not as a penalty, an amount equal to two (2) times the annual salary of the employee(s) retained or allowed to work for Customer in violation of this Section. Customer agrees that the foregoing restrictions are reasonably necessary to protect Virtual Imaging's legitimate business interest, and that they are reasonable as to their scope and duration.

**Miscellaneous -** The headings in the Agreement are inserted for convenience of reference only and will not constitute a part hereof. The Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof and supersedes all previous proposals, agreements whether oral or written. No representation or statement not contained in the original of the Agreement will be binding upon Virtual Imaging as a warranty or otherwise. Customer's acceptance of the Agreement is expressly limited to the terms and conditions set forth herein and elsewhere in the Agreement, and Customer may not modify, add, delete or otherwise alter any of the terms and conditions set forth in the Agreement. No amendment, modification or alternation of the terms and conditions set forth in the Agreement will be binding unless the same is in writing, dated subsequent to the date hereof and approved and executed by a duly authorized officer of each party. No work orders, service requests, purchase orders or similar instructions delivered to Virtual Imaging by Customer or otherwise made by Customer related to the Services or contemplated by the Agreement will mend, alter or modify the Agreement (except as provided in the preceding sentence), but rather will be deemed service requests subject to, and in all cases superseded by and subject to, the terms and conditions of the Agreement. Neither party will be liable to the other for failure to perform because of causes or events beyond the control of the parties which cannot be foreseen (or if foreseeable, are unavoidable) and which prevent or hinder the performance of the party's obligations hereunder. No provision of the Agreement will be deemed waived by course of conduct, unless such waiver is made in a writing signed by the parties stating that it is intended specifically to modify the Agreement, nor will any course of conduct operate or be construed as a waiver of any subsequent breach of the Agreement, whether of a similar or dissimilar nature. In the performance of Virtual Imaging's obligations under the Agreement, Virtual Imaging will at all times act as and be deemed an independent contractor. Nothing in the Agreement will be construed to render Virtual Imaging or any of its employees, agents or officers, an employee, joint venture, agent or partner of Customer. Neither party is authorized to assume or create any obligations or responsibilities, express or implied, on behalf of the other party, except as may be specifically provided for herein. The employees, methods, facilities and equipment of Virtual Imaging will at all times be under Virtual Imaging's exclusive direction and control.

**Law Governing Agreement -** The Agreement is made within the State of Florida and will be governed by and construed in accordance with the laws of the State of Florida without regard to its conflict of law provisions. Customer hereby consents to the exclusive jurisdiction and venue of either the U.S. District Court for the Southern District of Florida or the State Courts located in Palm Beach County, Florida. Customer further agrees that all suits commenced by Customer against Virtual Imaging upon any and all causes of action, whether or not such causes of action

have arisen under the Agreement and regardless of the legal theory upon which such causes of action are based, will be brought exclusively in either the U.S. District Court for the Southern District of Florida or the State Courts located in Palm Beach County, Florida. The parties irrevocably waive any right to a jury trial in any suit between them relating to or arising under the Agreement, and/or the application or interpretation thereof.

Initials: \_\_\_\_\_ Date: \_\_\_\_\_ Virtual: \_\_\_\_\_ Date: \_\_\_\_\_