



Monterey County

Board Order

168 West Alisal Street,
1st Floor
Salinas, CA 93901
831.755.5066

Agreement No.: A-12637

Upon motion of Supervisor Parker, seconded by Supervisor Salinas and carried by those members present, the Board of Supervisors hereby:

Approved and authorized the Purchasing Manager for Natividad Medical Center (NMC) to execute an Agreement with Intelligent Medical Objects, Inc. (IMO) for Software Subscription, Software Implementation, Migration and Software Maintenance Services at NMC in an amount not to exceed \$109,800 for the period January 28, 2014 to January 6, 2017.

PASSED AND ADOPTED on this 28th day of January 2014, by the following vote, to wit:

AYES: Supervisors Armenta, Calcagno, Salinas, and Parker

NOES: None

ABSENT: Supervisor Potter

I, Gail T. Borkowski, Clerk of the Board of Supervisors of the County of Monterey, State of California, hereby certify that the foregoing is a true copy of an original order of said Board of Supervisors duly made and entered in the minutes thereof of Minute Book 77 for the meeting on January 28, 2014.

Dated: January 29, 2014
File Number: A 13-295

Gail T. Borkowski, Clerk of the Board of Supervisors
County of Monterey, State of California

By Denise Hancock
Deputy

IMO LICENSE AGREEMENT

THIS LICENSE AGREEMENT ("Agreement") is made and entered into this 27th day of JANUARY, 2014, by and between County of Monterey, a political subdivision of the State of California, on behalf of Natividad Medical Center, an acute care hospital located at 1441 Constitution Blvd. Salinas, CA. 93906 (NMC) ("*Client*"), and Intelligent Medical Objects, Inc. having an address of 60 Revere Drive, Suite 360, Northbrook, IL 60062 ("*IMO*").

BACKGROUND

IMO has developed enhancement products known as IMO® Problem **IT1**®, IMO® Procedure **IT1**®, IMO® Allergen **IT1**®, and IMO® Nomenclature **IT1**® which incorporate linkages to and data from the National Library of Medicine's MeSH database, UMLS, CPT®, and SNOMED® CT. *Client* and IMO (collectively the "Parties" or individually "Party") desire to enter into a non-exclusive relationship whereby *Client* will license IMO's intellectual property, described in Schedule I, to use as an integral part of *Client's* Medical Information Technology, Inc. Electronic Medical Record system ("Meditech") on end-users' computer systems and make available the Service to End-Users.

In consideration of the foregoing, the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

1. DEFINITIONS

Effective Date means the earliest date the IMO Content is made accessible to *Client* via either (i) IMO Appliance; (ii) Meditech's EMR solution; or (iii) branded portal link provided by IMO to *Client*.

End-User means any person authorized by *Client* to use the Service that is either a direct employee or directly affiliated with the *Client* and bound by *Client's* non-disclosure and confidentiality agreements.

IMO Appliance means the IMO® Appliance that is selected and paid for by *Client* in Schedule I of this Agreement.

IMO Content means the IMO® Problem **IT1**®, IMO® Procedure **IT1**®, IMO® Allergen **IT1**®, and IMO® Nomenclature **IT1**® terminologies (as defined in Section I(A)(1)(ii) of Schedule I of this Agreement) and all Content Updates and furthermore, any other IMO specific proprietary content that is necessary to effectuate the timely fulfillment of these contractual obligations.

IMO Software Image means the IMO® Software Image that consists of the necessary software for the delivery and access to IMO Content that is loaded on either (i) the IMO® Appliance; (ii) dedicated hardware comparable to the minimum requirements listed in Schedule III; or (iii) dedicated virtual environment comparable to the minimum requirements listed in Schedule III.

Service means the IMO Content on the (i) IMO Appliance; (ii) IMO Software Image; or (iii) IMO's cloud-based hosting environment that is accessed by End-Users either (i) directly through a web-based portal; or (ii) through the Meditech EMR solution.

Term means the Term of this Agreement.

2. TERM AND TERMINATION

- A. The Term of this Agreement shall commence on the Effective Date and shall continue for three (3) years, with the option to extend the agreement(s) by mutual agreement of the Parties in writing. An electronic notice will be sent to the *Client's* Primary and Billing Contact one-hundred and twenty (120) days prior to the end of the then current licensing year.

B. Either party may terminate this Agreement by written notice to the other if the other party: (i) breaches this Agreement; and (ii) fails to cure such breach within thirty (30) days after written notification of such breach. Upon termination of this Agreement for any reason, *Client* shall, within ten (10) business days, return to IMO, delete, or destroy all documents, software and other materials or deliverables, excluding hardware component of the IMO Appliance, received from IMO or containing any of IMO's products or trade secrets, in whole or in part (and all copies thereof) and pay all outstanding fees owed under this Agreement. If *Client* has purchased an IMO Appliance, *Client* agrees to completely wipe clean the IMO Appliance upon termination of this Agreement. If so requested by IMO, *Client* shall deliver to IMO a certificate executed by one of its duly authorized officers confirming compliance with the return or destruction obligations set forth herein.

C. During the Term of this Agreement, either party may terminate the Agreement for any reason by giving at least thirty (30) days written notice of termination to the other party. If this Agreement is terminated under this section, *Client* shall not be entitled to a refund of any fees it paid to IMO.

3. LICENSE GRANT

IMO grants to *Client* a non-exclusive, non-transferable license to use the Service worldwide, except as specifically noted on Schedule I, during the Term, provided that *Client* assumes all responsibility to assure that the use of the Service is appropriate for the applicable Meditech systems. This license shall include the right to: (i) use the Service by End-Users solely as permitted by this Agreement; (ii) use the Service for internal purposes in a non-clinical setting for backup, archival, support, testing, training and demonstration purposes; (iii) install and configure the Service for use by End-Users; and (iv) demonstrate the Service to End-Users.

The Service is for use by *Client* and End-Users only as allowed by this Agreement. *Client* shall not, other than as specifically allowed by this Agreement, cause or permit others to copy, distribute, publish, license or otherwise transfer or commercially exploit the Service, in whole or part. *Client* shall not prepare derivative works or incorporate the Service, in whole or part, in any other system or work or reverse engineer, translate, or modify the Service, in whole or part, other than as is specifically allowed by this Agreement.

4. OWNERSHIP AND USE

IMO owns exclusive title to all its products, including the IMO Content and IMO Software Image and of all of its sub-parts and components, and all updates, modifications, alterations, customizations, derivative works, revisions or enhancements thereof, and all software, source code, and proprietary research, equations, screens, techniques, methodology, analysis, programming or know-how thereof. If *Client* requests that terms be added to the IMO Content and IMO approves such additions for inclusion in the Service, such additions will be part of the derivative work and shall be owned by IMO with all rights assigned by *Client* to IMO. *Client* will not be charged for regular inclusion of term requests. *Client* will have a perpetual, non-exclusive license to use these additional terms without additional IMO content.

5. CLIENT RESPONSIBILITIES

Subject to the terms and conditions of this Agreement, *Client* shall:

A. Support the Service and any necessary training for End-Users during the Term of this Agreement, subject to IMO's obligations as set forth herein.

B. Comply with the reporting and payment requirements set forth in Schedules I and II.

C. Acknowledge that access to the Service is dependent upon *Client's* concurrent active licensure of the Meditech EMR and any other software necessary to run the Service.

D. *Client* agrees to the provisions identified in Schedule IV for the use of CPT® within the IMO® Procedure **1IT1**® product.

E. Establish the appropriate firewalls and security systems, including antivirus software, so the Service is accessed only by defined End-Users and is not used in an unauthorized manner. IMO strongly recommends and

approves that *Client* installs commercial antivirus software onto either (i) the IMO Software Image; or (ii) the IMO Appliance.

F. If applicable, identify IMO as the source and copyright holder of the Service. Further, *Client* agrees not to obscure IMO copyright notices in any instance.

G. Use the IMO® Appliance for all access to the Service by the Meditech EMR solution during the initial implementation and testing until *Client* is live in a production environment and has been approved by IMO, at which point *Client* may choose to either (i) continue use of the IMO® Appliance or (ii) use other dedicated hardware or a dedicated virtual environment comparable to the minimum requirements listed in Schedule III.

H. Provide IMO with the ability to connect for the purposes of remote support to either (i) the IMO® Appliance; or if *Client* elects to host the Service pursuant to Section 5(G), (ii) the IMO Software Image loaded onto *Client's* dedicated hardware or dedicated virtual environment comparable to the minimum requirements listed in Schedule III.

I. Provide IMO the ability to retrieve from *Client's* environment any activity log files natively generated by a locally hosted IMO Software Image or IMO Appliance for support, troubleshooting and potential usability improvements.

J. Not install any software not approved by IMO, except for commercial anti-virus software, onto either (i) the *Client* environment that contains the IMO Software Image; or (ii) the IMO Appliance.

K. Have the option to self-report its Net Patient Revenue ("NPR") to IMO in lieu of IMO relying on *Client's* published NPR volume as specified by the American Hospital Directory. Should *Client* elect to self-report, *Client* shall, on an annual basis, provide IMO with *Client's* published NPR volume as contained in the *Client's* audited financial statement and any updates to the appropriate information requested by Schedule I of this Agreement. If the *Client's* reported NPR varies by more than ten percent (10%) with *Client's* published NPR volume as specified by the American Hospital Directory (<http://ahd.com>), *Client* shall provide IMO with documentation that supports the reported NPR. In the event that *Client* cannot substantiate its reported NPR, IMO may use the greater of the two NPR's in determining *Client's* annual license fees.

6. IMO RESPONSIBILITIES

Subject to the terms and conditions of this Agreement, IMO shall:

A. Provide *Client* with access to the Service within five (5) business days, excluding major U.S. holidays, of full execution of this Agreement by both Parties.

B. Provide IMO Content updates, enhancements, material data updates and new versions ("Content Updates") to *Client* in accordance with IMO's published release schedule http://www.e-imo.com/release_schedule.aspx. In addition, IMO will provide *Client* with any updates, enhancements and new versions to the IMO Software Image ("Software Updates") as they become generally available. This Section 6(B) encompasses all IMO deliverables furnished to *Client* during the Term of this Agreement.

C. Comply with all applicable local, state, and United States laws and regulations.

D. Compile the Service in a professional and workman like manner.

E. Facilitate for *Client* hardware repair and replacement of the IMO Appliance, solely in its capacity as an authorized Dell™ Online Self Dispatch participant, for the duration of Dell's Three-Year Limited Warranty, which is included in the IMO Appliance packaging.

7. WARRANTIES

A. **Client Warranty**

Client represents and warrants that: (i) it is solely responsible for the proper use of the Service, (ii) it will independently verify the proper application of information obtained from the Service, and (iii) it will not rely in any way on the Service as a substitute for exercising independent professional judgment in the use and application of the Service.

B. IMO Ownership Warranty

IMO represents and warrants that it owns all rights, title and interest in the IMO Content, and all associated Intellectual Property Rights, including all applicable patent, copyright, trade secret and trademark rights. IMO further represents and warrants that its Intellectual Property Rights do not infringe on any United States patent, trademark, or copyright of a third party.

C. Services Warranty

IMO represents and warrants that it shall provide the Service in a professional, skillful and workmanlike manner in accordance with industry standards.

D. Additional Warranties

IMO and Client represent and warrant that (a) IMO and Client have the authority to enter into the agreement. (b) IMO's or Client's performance does not violate other agreements or laws (c) there is no pending or threatened litigation that would have a material impact on IMO's or Client's ability to perform their respective obligations under this Agreement

8. INDEMNIFICATION

Each party shall defend, indemnify, and hold the other party and its officers, directors, parent company and agents harmless from any claims, liabilities, costs or expenses (including reasonable attorney fees) arising from breach of its representations and warranties in Section 7(A) and 7(B), provided however that IMO's indemnification shall not cover claims (i) based on information incorporated into the Service by *Client* or (ii) the result of a modification or addition to the Service made by *Client* or (iii) based upon the use of the Service in combination with any program or equipment or any part thereof not furnished or approved by IMO. The indemnifying party shall have sole control of the defense of any such action and all negotiations for its settlement or compromise, provided that the non-indemnifying party will not be liable under any settlement agreement unless that party consents thereto). Each party reserves the right to participate in the defense of any action and all negotiations for its settlement or compromise, at its own expense, where one party indemnifies the other.

9. INSURANCE.

IMO will carry professional liability coverage with minimum limits of One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate. IMO will carry commercial general liability coverage in minimum amounts of Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) in the annual aggregate. IMO will carry excess/umbrella liability coverage in minimum amounts of Two Million Dollars (\$2,000,000) per occurrence and Two Million Dollars (\$2,000,000) in the annual aggregate. IMO will carry workers compensation and employer's liability coverage in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) in the annual aggregate. IMO will provide a copy of their insurance certificates showing the above insurance includes a blanket additional insured endorsement in favor of the County of Monterey and Natividad Medical Center (NMC) and will show their insurance policy provisions of non-contributory language.

IMO shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, upon request, annual certificates to Client's Contracts/Purchasing Department. If the certificate is not received by the expiration date, Client shall notify IMO and IMO shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by IMO to maintain such insurance is a default of this Agreement, which entitles Client, at its sole discretion, to terminate the Agreement immediately.

10. WARRANTY DISCLAIMER AND LIABILITY LIMITATION

A. Warranty Disclaimer

CLIENT ACKNOWLEDGES THAT EXCEPT AS SPECIFICALLY PROVIDED IN SECTION 10 AND SCHEDULE I, THE SERVICE IS PROVIDED ON AN "AS IS" BASIS AND IMO MAKES NO REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, AS TO THE ACCURACY OR NATURE OF THE DATA FROM WHICH THE SERVICE IS COMPILED, THE MERCHANTABILITY AND FITNESS OF THE SERVICE FOR CLIENT'S PARTICULAR PURPOSE, OR THE COMPATIBILITY OF THE SERVICE WITH CLIENT'S HARDWARE AND SYSTEMS.

IN ADDITION, WITHOUT LIMITING THE FOREGOING, THE SERVICE HAS BEEN DESIGNED FOR USE IN THE UNITED STATES ONLY AND COVERS DRUG PRODUCTS USED IN PRACTICE IN THE UNITED STATES. IMO PROVIDES NO CLINICAL INFORMATION OR CHECKS FOR DRUGS NOT AVAILABLE FOR SALE IN THE UNITED STATES. CLINICAL PRACTICE PATTERNS OUTSIDE THE UNITED STATES MAY DIFFER SUBSTANTIALLY FROM INFORMATION SUPPLIED BY THE SERVICE. CLIENT ACKNOWLEDGES THAT IMO DOES NOT PROVIDE MEDICAL SERVICES TO PATIENTS AND IS NOT ENGAGED IN THE PRACTICE OF MEDICINE. CLIENT FURTHER ACKNOWLEDGES THAT ANY END-USER'S USE OF THE SOFTWARE DOES NOT ABSOLVE THAT END-USER OF HIS/HER OBLIGATION TO EXERCISE INDEPENDENT MEDICAL JUDGMENT IN RENDERING HEALTH CARE SERVICES TO PATIENTS. CLIENT ACKNOWLEDGES THAT THE PROFESSIONAL DUTY TO THE PATIENT IN PROVIDING HEALTHCARE SERVICES LIES WITH THE END-USER PROVIDING THE SERVICES, NOT WITH IMO.

B. Limitation of Damages

IMO and Client shall be liable for any damages that arise out of either parties' breach of its confidentiality obligations, Client's breach of Section 3, and damages payable by either party pursuant to and expenses incurred as a result of either parties' obligations to indemnify the other party. In no case shall either party be liable for special, punitive, exemplary, indirect, incidental or consequential damages, whether such damages are foreseeable, and irrespective of the theory or cause of action upon which the damages might be based.

EXCEPT FOR BREACHES ARISING OUT OF SECTIONS 3, 8 AND 12, MAXIMUM LIABILITY SHALL BE LIMITED TO THE GREATER OF \$250,000 OR TOTAL LICENSE FEES PAID TO IMO BY CLIENT FOR THE IMO CONTENT LESS AMORTIZATION FOR ITS USE ON A STRAIGHT LINE BASIS OVER THE CURRENT TERM OF THE AGREEMENT.

11. IMO Technical Obligations

IMO represents that it has not included in the Service any disabling devices such as devices that result in the electronic recapture of programming, undocumented functions, passwords, keys, security devices or trap doors, and any computer viruses. If any computer instruction (including, but not limited to, computer instructions commonly referred to as trojan horses, anomalies, worms, self-destruct mechanisms, or time/logic bombs) is, or is believed to be, embedded in the Service by IMO or at IMO's direction, IMO agrees to promptly inform *Client*, cooperate with *Client*, and both parties will use their reasonable efforts to remove the instructions and mitigate against its effects.

IMO represents and warrants that upon the Effective Date and extending for as long as *Client* remains continuously on support, the IMO Content and IMO Software Image will, without material error, properly function when operated in accordance with the documentation and in the Meditech environment for which IMO designed the Service to operate. In the event of a breach of this warranty, IMO will repair, replace, or pay for the cost of replacing the failing item of the IMO Content and IMO Software Image so that it does perform in accordance with such warranty. This warranty shall not apply if *Client* or End-Users fail to use the Service according to professional standards. CLIENT'S RIGHTS UNDER THIS SUBPARAGRAPH CONSTITUTE ITS SOLE AND EXCLUSIVE REMEDY AND IMO'S SOLE AND EXCLUSIVE OBLIGATIONS WITH RESPECT TO ANY BREACH OF THIS OBLIGATION WARRANTY.

12. CONFIDENTIALITY

Each party shall maintain all written documents and information furnished to it by or concerning the other party and marked "Confidential," "Proprietary" or in some other manner to indicate its confidential nature in strict confidence, except to the extent that such information can be shown to have been (i) known by the receiving party prior to its receipt from the disclosing party, (ii) in the public domain through no fault of the disclosing party, (iii) later lawfully acquired by the receiving party from a third party in legitimate possession of such information, or (iv) independently developed by or for the receiving party without any use of the confidential information of the disclosing party. Neither party shall disclose to any other person or entity, or otherwise use, confidential information except strictly in connection with the parties' duties and obligations under this Agreement. Each party shall notify the other promptly of any law or order requiring disclosure of confidential information, so that the disclosing party can take appropriate action to protect confidential information. Each party's obligations under this Section 11 shall survive the termination of this Agreement.

13. USE OF NAME

Except for inclusion in IMO's customer list, IMO will not use *Client's* name, trade names, trademarks, or service-marks in any public announcement, news release, advertising or promotional literature without *Client's* express, prior written consent.

14. GENERAL

A. Except for obligations to pay money, neither *Client* nor IMO shall have the responsibility for any delay or failure of performance resulting from causes beyond its reasonable control and without its fault or negligence. In such event, the delayed party shall perform its obligations within a reasonable time after the cause of the delay or failure has been remedied.

B. In the event of any dispute under this Agreement the prevailing party shall be entitled to recover its costs of litigation including reasonable attorney fees.

C. This Agreement constitutes the entire agreement of *Client* and IMO and supersedes and terminates all other prior and contemporaneous agreements and understandings regarding the subject matter hereof. No provision of this Agreement may be terminated, modified or waived unless set forth in writing and executed by authorized representatives of *Client* and IMO. If any provision of this Agreement shall be deemed by a court of competent jurisdiction to be unenforceable or illegal, the remainder of the Agreement shall continue in full force and effect.

D. In performing their obligations hereunder, the parties are acting as separate and independent entities and neither party is an agent or employee of the other party.

E. This Agreement and the license issued hereunder shall be binding upon and inure to the benefit of the parties, their respective successors or permitted assigns.

F. All notices and communications required or permitted under this Agreement shall be in writing and delivered by electronic mail or by registered or certified mail, postage prepaid, or by nationally recognized overnight delivery, addressed as follows:

If to Client:

Natividad Medical Center
441 Constitution Blvd.
Salinas, CA. 93906

If to IMO, Inc.

Intelligent Medical Objects, Inc
60 Revere Drive, Suite 360
Northbrook, IL 60062
Attn: CEO

With copy to: Contracts Administrator

Fax: _____

Phone: 831-783-2620

Email: catosl@natividad.com

Fax: (847) 272-7968

Phone: (847) 272-1242

Email: Legal@imo-online.com

G. *Client* agrees to comply fully with all relevant export laws and regulations of the United States ("Export Laws") to assure that the Service is not in violation of Export Laws or used for any purposes prohibited by the Export Laws.

H. IMO agrees to maintain insurance throughout the term of this Agreement which is ordinary and reasonable for an organization in the industry.

I. Each party warrants and affirms that the person signing this Agreement on behalf of that party is duly authorized and empowered by that party to do so, and that such person has the right and the authority to bind that party to this Agreement.

J. If *Client* purchases CPT® licenses for End-Users directly from IMO pursuant to Section 1(B) of Schedule 1, then *Client* shall make available to IMO in a timely manner, but not exceeding thirty (30) days from date of an audit request, all records necessary for IMO to audit compliance and adherence to the purchase of these licenses.

K. The following order of precedence shall be followed in resolving any inconsistencies between the terms of this Agreement and the terms of any Schedules, Exhibits, attachments, addenda and other documents to be attached hereto: (a) first, the terms contained in the body of this Agreement; (b) second, the terms of the Schedules, Exhibits, attachments and addenda to this Agreement, provided that no order of precedence shall be applied among such Schedules, Exhibits, attachments and addenda, and (c) third, documentation.

L. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, order of precedence, warranty disclaimers, indemnity and limitations of liability.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, *Client* and IMO have executed this Agreement as of the Effective Date.

Executed on behalf of
Client

By: [Signature]

Name: Henry Weis
Title: CEO
Date: 12/16/13

Executed on behalf of
Intelligent Medical Objects, Inc.

By: [Signature]

Name: FRANK DIACIPI-RAO
Title: CEO
Date: 12-16-2013

Reviewed by IMO Legal

Reviewed as to fiscal provisions

[Signature]
Auditor-Controller
County of Monterey

12-2013

[Signature]

A. Brereton
Dec 19, 2013
Deputy County Counsel

[Signature]


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2-6-14
NANCY CONTRACTS

IN WITNESS WHEREOF, *Client* and IMO have executed this Agreement as of the Effective Date.

Executed on behalf of
Client

By: _____
Name: _____
Title: _____
Date: _____

Executed on behalf of
Intelligent Medical Objects, Inc.

By: 
Name: FRANK D'AMICO
Title: CEO
Date: 12-16-2013

Reviewed by IMO Legal

SCHEDULE I

FEES AND PAYMENTS

I. FEES

A. *Client* will pay IMO the applicable fees for the below IMO components. The IMO components are as follows:

1. IMO® Content Subscription

i. Description: The subscription includes a license to the IMO products listed below as either (i) accessed directly through a web-based portal or (ii) implemented by Meditech for full use within *Client's* MAGIC, Client/Server, and/or 6.X platforms. Any use of the Service includes an augmented diagnosis search capabilities, clinician friendly terms, mappings to applicable code sets including but not limited to ICD-9-CM, ICD-10-CM, MeSH, SNOMED® CT, HCPCS, LOINC, and CPT®, and within Meditech only, enhanced reporting capabilities that support Meaningful Use requirements.

ii. IMO products licensed:

1. IMO® Problem **UITI**® Terminology
2. IMO® Procedure **UITI**® Terminology - the use of the IMO® Procedure **UITI**® Vocabulary Product is limited to the following territories: Argentina, Australia, Bahamas, Belgium, Bermuda, Brazil, Canada, Cayman Islands, Chile, China, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, India, Ireland, Israel, Italy, Jamaica, Japan, Mexico, New Zealand, Norway, Panama, Portugal, Singapore, South Africa, Spain, Sweden, Thailand, Turkey, United Arab Emirates, United Kingdom, United States and its territories, and Venezuela.
3. IMO® Allergen **UITI**® Terminology
4. IMO® Nomenclature **UITI**® Terminology

iii. Fees - *Client* will pay IMO an annual subscription fee during the Term of this Agreement based on *Client's* published Net Patient Revenue (NPR) volume as specified by the American Hospital Directory (<http://ahd.com>). In addition to section C of this schedule below, IMO reserves the right to adjust the annual subscription fee on either: (i) each anniversary of the Effective Date of the Agreement if *Client's* NPR volume changes by greater than 5% (either up or down); or (ii) a change in the number of facilities that utilize the Service.

Client's self-reported NPR volume is \$135,010,660

Client license fee as of the Effective Date of the Agreement is \$30,600.

iv. Content Updates - *Client* will receive all Content Updates in accordance with section 6(B) of this Agreement as part of the IMO® content subscription.

2. IMO Migration

i. Description: The migration service provided is performed by IMO knowledge team experts to map *Client's* existing Meditech nomenclature dictionaries, as specified below, to the IMO Content. *Client* is responsible for providing the necessary exports to IMO for the migration efforts and to load the resulting mapped files back into the Meditech systems.

ii. Fees - *Client* will pay IMO a onetime fee of \$10,000 per migration for up to five (5) days per migration. The number of migrations required for *Client* is determined by factors that include, but are not limited to: (i) the number of *Client* MIS/mnemonics; (ii) the number of *Client* facilities; and (iii) whether *Client* facilities share dictionaries.

IMO reserves the right to charge *Client* additional migration fees based on an analysis of the exports provided by *Client* to IMO. All additional work necessary to perform the migration efforts for *Client* shall be billed at \$1,800 per day per migration. IMO shall provide *Client* with an estimated budget for the additional migration efforts and *Client* and IMO shall mutually agree to this budget before work commences.

- iii. *Client* requires 1 Migration(s) as of the Effective Date of this Agreement. The following list includes all of *Client's* facilities whose dictionaries are covered by the reported number:

1. Natividad Medical Center

3. IMO Implementation

Description: The Implementation service includes a server as specified in Schedule III preloaded with the IMO® Software Image.

- i. Access: all access to the Service will be to (i) the IMO® Appliance, or, if *Client* elects pursuant to Section 5(G), (ii) the dedicated hardware or dedicated virtual environment comparable to the minimum requirements listed in Schedule III. IMO's cloud based hosted environment will be setup for failover purposes.
- ii. Fees: *Client* will pay IMO a onetime, non-refundable fee of \$5,000 for implementation of the Service. *Client* shall also pay IMO an additional \$1,000 per year for up to twenty (20) hours year of support and maintenance for the IMO® Appliance.

4. Summary of Fees

i. The language of this subsection is intended solely for summation of the fees as outlined above. For value of Service to be delivered, *Client* shall pay to IMO the following fees for the first year of the Agreement:

- a. \$10,000 for migration services;
b. \$5,000 for implementation services;
c. \$1,000 for one year of support and maintenance services; and
d. \$30,600 for a one-year subscription to the IMO Content.
e. \$46,600 for total first year fees.

ii. For the first year of the Agreement, fifty percent (50%) of the fees for the IMO Content subscription will be a one-time, non-refundable upfront commitment fee. Except in the case of an uncured, material breach by IMO, *Client* will have no recourse to make any claims for reimbursement of such commitment fee.

iii. After the first year of this Agreement, *Client* shall pay to IMO the annual fees pursuant to this Schedule I for its subscription to the IMO Content and support and maintenance of the IMO Software Image and IMO Appliance.

B. AMA End User Fees

Client acknowledges that use of the IMO® Procedure **IT**® product by End-Users requires a CPT® license for each End-User from the American Medical Association ("AMA"). The definition of this End-User for the purpose of a CPT® license and this section is:

- i. an individual who accesses, manipulates or uses the IMO® Procedure **IT**® product; or
ii. an individual who accesses, manipulates or uses the IMO® Procedure **IT**® product to produce or enable an output (data, reports, etc.) that could not have been created without the use of the IMO® Procedure **IT**® product; or
iii. an individual who makes use of an output that was created with the use of the IMO® Procedure **IT**® product.

Client represents and warrants that it has, and will maintain for the Term of the Agreement, AMA CPT® code licenses directly from the AMA or an authorized reseller for *Client's* End Users. If *Client* elects to purchase CPT® licenses for End-Users directly from IMO, then *Client* shall pay to IMO the following pass-through fee:

On or before March 31, 2013:	<u>\$13.50</u> per End User for each version of CPT®
April 1, 2013 – December 31, 2013:	<u>\$14.00</u> per End User for each version of CPT®
January 1, 2014 – December 31, 2014:	<u>\$14.50</u> per End User for each version of CPT®
After December 31, 2014:	\$15.00 per End-User of CPT®

IMO will release to *Client* once per calendar year in January during the Term of the Agreement an update to the IMO® Procedure **IT**® product containing mappings to the new version of CPT®. These fees are set by the AMA and are subject to change upon thirty (30) days written notice by IMO to *Client*.

C. After the Initial Term, IMO has the option to change the *Client* license fees once annually with ninety (90) days prior written notice to *Client*. IMO agrees that any such increase in the *Client* license fees shall not exceed five (5) percent of the CPI Medical Care Services Index, whichever is greater.

2. PAYMENTS

- A. This Agreement is considered executed as of the Effective Date of this Agreement and billing for all applicable fees will immediately commence and are due thirty (30) days after the Effective Date and on each anniversary thereof during the Term of this Agreement.
- B. IMO shall not receive reimbursement for travel expenses unless set forth in this Agreement; and then only in accordance with any applicable County policies.
- C. Invoice amounts shall be billed directly to the ordering department. IMO shall submit such invoice on the Effective Date and prior to each anniversary thereof during the term of the Agreement. The invoice shall set forth the amounts claimed by IMO for the upcoming period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. Client shall certify the invoice, either in the requested amount or in such other amount as Client approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of Invoice due date.
- D. If *Client* purchases AMA CPT® licenses through IMO, then within fifteen (15) days after the end of each calendar quarter, *Client* will provide IMO with an aggregate number of CPT® users via e-mail to accounting@imo-online.com. IMO will invoice *Client* the annual AMA End User Fees for all new AMA End Users. Each January during the Term of the Agreement, IMO will invoice *Client* the annual AMA End User Fee for all existing AMA End Users for this new version of CPT® at that time.
- E. It shall be *Client's* responsibility to comply with the appropriate sales and use tax requirements applicable in their respective state.
- F. *Client* will make its best efforts to utilize IMO's electronic payment program by returning the completed enrollment form received with the initial IMO invoice for initial EFT payment account setup within fifteen (15) days of *Client's* receipt of IMO's invoice. By returning the completed enrollment form to IMO, *Client* authorizes the financial institutions involved in the processing of *Client's* payments to IMO to receive confidential information necessary to effect enrollment in the EFT payment methods, and to answer inquiries and resolve issues related to enrollment and payments. This information includes, but is not limited to, payment instructions, tax information, account numbers, and payment transaction details.

**SCHEDULE II
CLIENT CONTACT INFORMATION**

Client Address:

Address Line 1: _____

Address Line 2: _____

City: _____ State: _____ Zip: _____

Primary Contact:

Name: _____

Phone: _____

Email: _____

Billing Contact:

Name: _____

Phone: _____

Email: _____

Billing Address:

Address Line 1: _____

Address Line 2: _____

City: _____ State: _____ Zip: _____

IMO Appliance Shipping Address:

Address Line 1: _____

Address Line 2: _____

City: _____ State: _____ Zip: _____

Role	Contact Name	E-Mail	Phone
<i>Client</i> Primary Clinical Contact			
<i>Client</i> Primary Technical Contact			
Vocabulary Maintenance Website Coordinator (VMWC)			

Client Primary Clinical Contact - Point person for IMO to contact regarding clinical content matters. This is often the *Client's* Chief Medical Information Officer (CMIO), Physician Director of Informatics or Physician Champion but may be different.

Client Primary Technical Contact - Point person for IMO to contact regarding technical matters.

Vocabulary Maintenance Website Coordinator (VMWC) - Person responsible to send IMO term requests. IMO will grant access to IMO's web-based Term Request site where the VMWC can make term requests for new (or ask questions about existing) terms and mappings. The VMWC can also check on the status of the request in real-time and interact with both the IMO knowledge staff as well as the AHIMA staff whom IMO has partnered with to review and analyze IMO's maps to ICD-9-CM and ICD-10-CM.

**SCHEDULE III
HARDWARE REQUIRMENTS**

IMO® Software Image Minimum Requirements

Component	Requirement
Processor	<ul style="list-style-type: none">• Minimum: 1 GHz (x86 processor) or 1.4 GHz (x64 processor)• Recommended: 2 GHz or faster
Memory	<ul style="list-style-type: none">• Minimum: 8 GB RAM• Recommended: 12 GB RAM or greater
Available Disk Space	<ul style="list-style-type: none">• Minimum: 20 GB• Recommended: 100 GB or greater <p>Note: Computers with more than 16 GB of RAM will require more disk space for paging, hibernation, and dump files.</p>
Operating System	Windows 2008 R2 x64 Standard

IMO® Appliance Technical Specifications

PowerEdge r210 II (1U) chassis
16GB Dual Rank 1333 MHz RAM
Intel Xeon E3-1220 3.10 GHz, 8M Cache, Turbo, Quad-core processor
(2) 146GB 10K RPM SA SCSI 6Gbps 2.5in Hot plug Drives (Raid 1)
PERC H200 Adaptor Internal RAID controller
Embedded Windows 2008 R2 x64 Standard

Internet connectivity

Internet connectivity is required for updates and support. Specific ports will need to be authorized on the *Client* firewall as specified in the IMO Installation and Setup guide. IMO reserves the right to change the required ports as needed and will provide Client with updated documentation as it is released.

Remote support

Typical remote support can take place utilizing standard web-based desktop sharing tools over port 80. In some cases IMO may require remote desktop access (i.e. RDP) to either (i) the IMO® Appliance or (ii) the IMO® Software Image loaded into *Client's* environment for advanced troubleshooting and configuration changes.

**SCHEDULE IV
END-USER LICENSE FOR CPT®**

1. Grant of Rights; Restrictions

If *Client* purchases CPT® licenses directly from IMO pursuant to Schedule I, Section I(B) of this Agreement, the following terms and conditions apply:

- (i) The Service contains CPT® content ("CPT") licensed by the American Medical Association ("AMA").
- (ii) The license granted for CPT is a nontransferable, nonexclusive license for the sole purpose of internal use by *Client* within the United Kingdom.
- (iii) *Client* is prohibited from publishing, distributing via the Internet or other public computer based information system, creating derivative works (including translating), transferring, selling, leasing, licensing or otherwise making available the Service, or a copy or portion of the Service, to any unauthorized party.
- (iv) The provision of updated CPT within the Service is dependent on a continuing contractual relationship between IMO and the AMA.

2. Notices

Client acknowledges that:

- (i) CPT © 2012 American Medical Association;
- (ii) CPT is a registered trademark of the American Medical Association; and
- (iii) The Service includes CPT which is commercial technical data and/or computer data bases and/or commercial computer software and/or commercial computer software documentation, as applicable, which was developed exclusively at private expense by the American Medical Association, 515 North State Street, Chicago, Illinois, 60654, USA. U.S. government rights to use, modify, reproduce, release, perform, display, or disclose these technical data and/or computer data bases and/or computer software and/or computer software documentation are subject to the limited rights restrictions of DFARS 252.2277015(b)(2) (November 1995) and/or subject to the restrictions of DFARS 227.7202-1(a) (June 1995) and DFARS 227.7202-3(a) (June 1995), as applicable, for U.S. Department of Defense procurements and the limited rights restrictions of FAR 52.227-14 (December 2007) and/or subject to the restricted rights provisions of FAR 52.227-14 (December 2007) and FAR 52.227-19 (December 2007), as applicable, and any applicable agency FAR Supplements, for non-Department of Defense Federal procurements.

3. Back Up Rights

Client may only make copies of the Service for back up or archival purposes. All notices of proprietary rights, including trademark and copyright notices, must appear on all permitted back up or archival copies made.

4. Miscellaneous

To the extent possible under the applicable laws, the warranties and liability for CPT as contained in the Service is provided "AS IS" without any liability to the AMA, including without limitation, no liability for consequential or special damages, or lost profits for sequence, accuracy, or completeness of data, or that it will meet the *Client's* requirements, and that the AMA's sole responsibility is to make available to IMO replacement copies of CPT if the data is not intact; and that the AMA disclaims any liability for any consequences due to use, misuse, or interpretation of information contained or not contained in CPT.