



DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF HEALTH SERVICE REGULATION

ROY COOPER
GOVERNOR

MANDY COHEN, MD, MPH
SECRETARY

MARK PAYNE
DIRECTOR

October 19, 2017

Dee Jay Zerman
211 Friday Center Drive, Suite G014
Chapel Hill, NC 27517

Exempt from Review – Replacement Equipment

Record #: 2417
Facility Name: University of North Carolina Hospitals
FID #: 923517
Business Name: University of North Carolina Hospitals at Chapel Hill
Business #: 1900
Project Description: Replace existing CyberKnife stereotactic radiosurgery linear accelerator
County: Orange

Dear Ms. Zerman:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency), determined that based on your letter of October 16, 2017, the above referenced proposal is exempt from certificate of need review in accordance with N.C. Gen. Stat. §131E-184(f). Therefore, you may proceed to acquire without a certificate of need the CyberKnife M6 and the necessary QA Stereochecker system to replace the CyberKnife G4. The existing CyberKnife is located in the sub-basement within UNC Hospitals and the replacement CyberKnife and the QA Stereochecker system will be located in the sub-basement, Room 2 of NC Cancer Hospital, which is part of UNC's Hospitals' main campus complex. This determination is based on your representations that the existing unit will be sold or otherwise disposed of and will not be used again in the State without first obtaining a certificate of need if one is required.

Moreover, you need to contact the Agency's Construction and Acute and Home Care Licensure and Certification Sections to determine if they have any requirements for development of the proposed project.

It should be noted that the Agency's position is based solely on the facts represented by you and that any change in facts as represented would require further consideration by this office and a separate determination. If you have any questions concerning this matter, please feel free to contact this office.

Sincerely,

Bernetta Thorne-Williams
Project Analyst

Martha J. Frisone
Chief, Healthcare Planning and
Certificate of Need Section

cc: Construction Section, DHSR
Sharetta Blackwell, Program Assistant, Healthcare Planning, DHSR
Acute and Home Care Licensure and Certification Section, DHSR

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION
WWW.NCDHHS.GOV

TELEPHONE 919-855-3873

LOCATION: EDGERTON BUILDING • 809 RUGGLES DRIVE • RALEIGH, NC 27603

MAILING ADDRESS: 2704 MAIL SERVICE CENTER • RALEIGH, NC 27699-2704

AN EQUAL OPPORTUNITY/ AFFIRMATIVE ACTION EMPLOYER





Received 10/16/17
Record # 2417
Bus. # 1900
FID # 923517

James T. Hedrick Building
211 Friday Center Drive, Ste G014
Chapel Hill, NC 27517

October 16, 2017

Ms. Bernetta Thorne-Williams
Healthcare Planning and Certificate of Need Section
Division of Health Service Regulation, DHHS
2704 Mail Services Center
Raleigh, NC 27699-2704

RE: Request for Exemption / Replacement of existing CyberKnife stereotactic
radiosurgery linear accelerator / UNC Hospitals / Orange County

Dear Ms. Thorne-Williams:

UNC Hospitals is planning to replace its existing stereotactic radiosurgery linear accelerator, the CyberKnife unit, and is requesting confirmation that the replacement of this equipment is exempt from review pursuant to §NCGS 131E-184(f). The existing equipment to be replaced is located within UNC Hospitals at 101 Manning Drive in Chapel Hill, NC. The CyberKnife unit will be replaced with comparable equipment, and a QA Stereochecker system will be acquired, for a total project cost of \$4,270,223. The existing CyberKnife was placed in service in 2007, and is used on a daily basis. The equipment replacement is required due to its age, which leads to added costs, operational delays, and patient, staff and physician dissatisfaction. The QA Stereochecker must be acquired to provide the QA function for the multi-leaf collimator contained in the replacement CyberKnife M6; the existing CyberKnife G4 does not require a QA Stereochecker because it does not have a multi-leaf collimator.

§NCGS 131E-184(f) Exemptions from Review provides that "*The Department shall exempt from certificate of need review the purchase of any replacement equipment that exceeds the two million dollar (\$2,000,000) threshold set forth in G.S. 131E-176(22) [sic should be (22a)] if all of the following conditions are met:*

- (1) *The equipment to be replaced is located on the main campus.*
- (2) *The Department has previously issued a certificate of need for the equipment being replaced. This subdivision does not apply if a certificate of need was not required at the time the equipment being replaced was initially purchased by the licensed health service facility.*
- (3) *The licensed health service facility proposing to purchase the replacement equipment shall provide prior written notice to the Department, along with supporting documentation to demonstrate that it meets the exemption criteria of this subsection."*

(1) *Equipment to be replaced is located on the main campus:* The purpose of this project is to replace the existing CyberKnife unit that is located within UNC Hospitals' sub-basement. The replacement equipment and new dedicated QA Stereochecker will be installed in the vacated Room 2 in the existing NC Cancer Hospital's sub-basement (also part of the UNC Hospitals' main hospital complex), adjacent to the other linear accelerators. See Exhibit 1 for floor plans identifying the locations of the existing equipment, the proposed replacement equipment, and general orientation of spaces within the campus.

(1) Main Campus. NCGS §131E-176(14n) defines “Main Campus” as *the site of the main building from which a licensed health service facility provides clinical patient services and exercises financial and administrative control over the entire facility, including the building and grounds adjacent to the main building.*”

The existing CyberKnife G4 is located in the sub-basement of the original NC Memorial Hospital building on the main campus of UNC Hospitals. The replacement CyberKnife M6 and its dedicated QA Stereochecker will also be located on the main campus of UNC Hospitals. See Exhibit 1. During the replacement, the equipment will be relocated so that the CyberKnife M6 and QA Stereochecker are co-located with the other existing linear accelerators in the sub-basement of the NC Cancer Hospital, which is also a part of UNC Hospitals’ main campus. The replacement CyberKnife M6 and QA Stereochecker will be installed in the vault vacated by a linear accelerator that has already been approved to be relocated to the UNC Hospitals’ Hillsborough Campus (CON Project IDs # J-11035-15 and cost-overrun J-11298-17.) The use of the vacated CyberKnife G4 vault in the NC Memorial Hospital sub-basement is yet to be determined. If a CON is required for the services to be provided in the vacated space, an application will be submitted.

Exhibit 1 also contains a map of the UNC Hospitals’ main campus and the buildings. UNC Hospitals is a licensed health service facility (DHSR Acute Care License No. H0157).

The building from which UNC Hospitals provides clinical patient services and exercises financial and administrative control over the entire facility is co-located on the UNC Hospitals’ main campus along with the UNC Hospitals. These offices are physically located on the 3rd floor of the Med Wing E, connected to the original main hospital building. The locations of the financial officer and administrative officer are also indicated the map in Exhibit 1.

(2) The Department has previously issued a certificate of need for the equipment being replaced: See Exhibit 2 for a copy of the CON Project ID # J-7626-06 issued in 2006 for the stereotactic radiosurgery linear accelerator, which is now planned to be replaced. This 2006 replacement equipment (i.e. the existing CyberKnife G4) replaced the original stereotactic radiosurgery linear accelerator which was called the Mevatron 77. The Mevatron 77 was acquired in the 1980’s prior to linear accelerators being regulated by CON law. The Mevatron 77 was acquired for less than \$500,000 which was below the CON threshold at that time, and before the definition of oncology treatment center became part of the CON law.

(3) Prior Written Notice: This request shall serve of prior written notice of this activity.

(3) Supporting documentation to demonstrate that it meets the exemption criteria: We are supplying the following information that the CON Section has requested in the past as a part of its general information request for an equipment replacement.

1. *A comparison of the existing and replacement equipment, using the format in the following table:*
Equipment Comparisons

	Existing Equipment	Replacement Equipment
Type of Equipment (List each component)	CyberKnife G4	CyberKnife M6 and QA Stereochecker
Manufacturer of Equipment	Accura	Accura
Tesla Rating for MRIs	N/A	N/A
Model Number	G4	M6 for CK; QA Stereochecker
Serial number	127	To be determined
Provider's Method of Identifying Equipment	By model & serial #s	By model & serial #s
Specify if Mobile or Fixed	Fixed	Fixed
Mobile Trailer Serial Number/VIN #	Not applicable	Not applicable
Mobile Tractor Serial Number/VIN #	Not applicable	Not applicable
Date of Acquisition of Each Component	May 2007	To be 2018
Does Provider Hold Title to Equipment or Have a Capital Lease?	Hospital owns	Hospital will own
Specify if Equipment Was/Is New or Used When Acquired	New	New
Total Capital Cost of Project (Including Construction, etc.) <See attached certified capital cost in Exhibit 3>	\$4,354,283	\$4,270,223 including installation and equipment
Total Cost of Equipment	\$3,650,000	\$2,972,759 CyberKnife M6; \$75,000 QA Stereochecker
Fair Market Value of Equipment	See attached quote	See attached quotes
Net Purchase Price of Equipment	\$3,650,000	\$2,972,759 CyberKnife; \$75,000 QA Stereochecker
Locations Where Operated	UNC Hospitals	UNC Hospitals
Number of Days In Use/To be Used in N.C. Per Year	365 days	365 days
Percent of Change in Patient Charges (b) Procedure)	N/A	No change
Percent of Change in Per Procedure Operating Expenses (b) Procedure)	N/A	No change
Type of Procedures Currently performed on Existing Equipment	Stereotactic radiosurgery linear accelerator procedures	N/A
Type of Procedures New Equipment is Capable of Performing	N/A	Stereotactic radiosurgery linear accelerator procedures

2. A description of the basic technology and functions of the existing and replacement equipment, including the diagnostic and treatment purposes for which the equipment is used or capable of being used.

Response: The existing CyberKnife G4 will be replaced with a CyberKnife M6 and QA Stereochecker system. All are used in the performance of stereotactic radiosurgery procedures and quality assurance. While providing the same level of delivery precision, the replacement CyberKnife M6 will allow for a significant reduction in treatment time and optimized workspace geometry as compared to the existing CyberKnife G4.

3. Brochures or letters from the vendors describing the capabilities of the existing equipment and the replacement equipment.

Response: The capabilities are described in the equipment quotes. Exhibit 4 contains quotes for the replacement CyberKnife M6 and QA Stereochecker. The original quote for the existing CyberKnife G4 (unit being replaced) is contained in Exhibit 5.

4. A copy of the purchase order for the existing equipment, including all components and original purchase

price.

Response: A copy of the original quote for the CyberKnife G4 is contained in Exhibit 5. The original purchase order is not available but the original cost is included in the table above.

5. *A copy of the title, if any, for the existing equipment or the capital lease for the existing equipment.*

Response: Not applicable. The equipment does not have a title and will not be leased.

6. *If the replacement equipment is to be leased, a copy of the proposed lease that transfers substantially all the benefits and risks inherent in the ownership of the equipment to the lessee of the equipment, in accordance with criteria in Generally Accepted Accounting Principles (GAAP).*

Response: Not applicable. The equipment will not be leased.

7. *If the replacement equipment is to be purchased, a copy of the proposed purchase order or quotation, including the amount of the purchase price before discounts and trade-in allowance.*

Response: A copy of the quotes for the replacement CyberKnife M6 and new QA Stereochecker system are contained in Exhibit 4.

8. *A letter from the person taking possession of the existing equipment that acknowledges the existing equipment will be permanently removed from North Carolina, will no longer be exempt from requirements of the North Carolina Certificate of Need law, and will not be used in North Carolina without first obtaining a new certificate of need.*

Response: See Exhibit 6.

9. *Documentation that the existing equipment is currently in use and has not been taken out of service.*

Response: The existing operational CyberKnife is identified on the most recent Licensure Renewal Application form on file with DHSR. A copy can be provided upon request.

Also attached as Exhibit 3, is a completed 'Proposed Total Capital Cost of Project' form which projects the total capital cost of this replacement project to be \$4,270,223. The total capital cost includes all costs required to make the equipment operational. Also included in Exhibit 1 are copies of the line drawings for the project. Since the room already exists, minor equipment and furniture will be relocated and reused. Beyond the items included in this estimate, no additional renovations, equipment or furniture will be required for this project.

Please do not hesitate to contact me at 984-974-1243 if have any questions.

Sincerely,

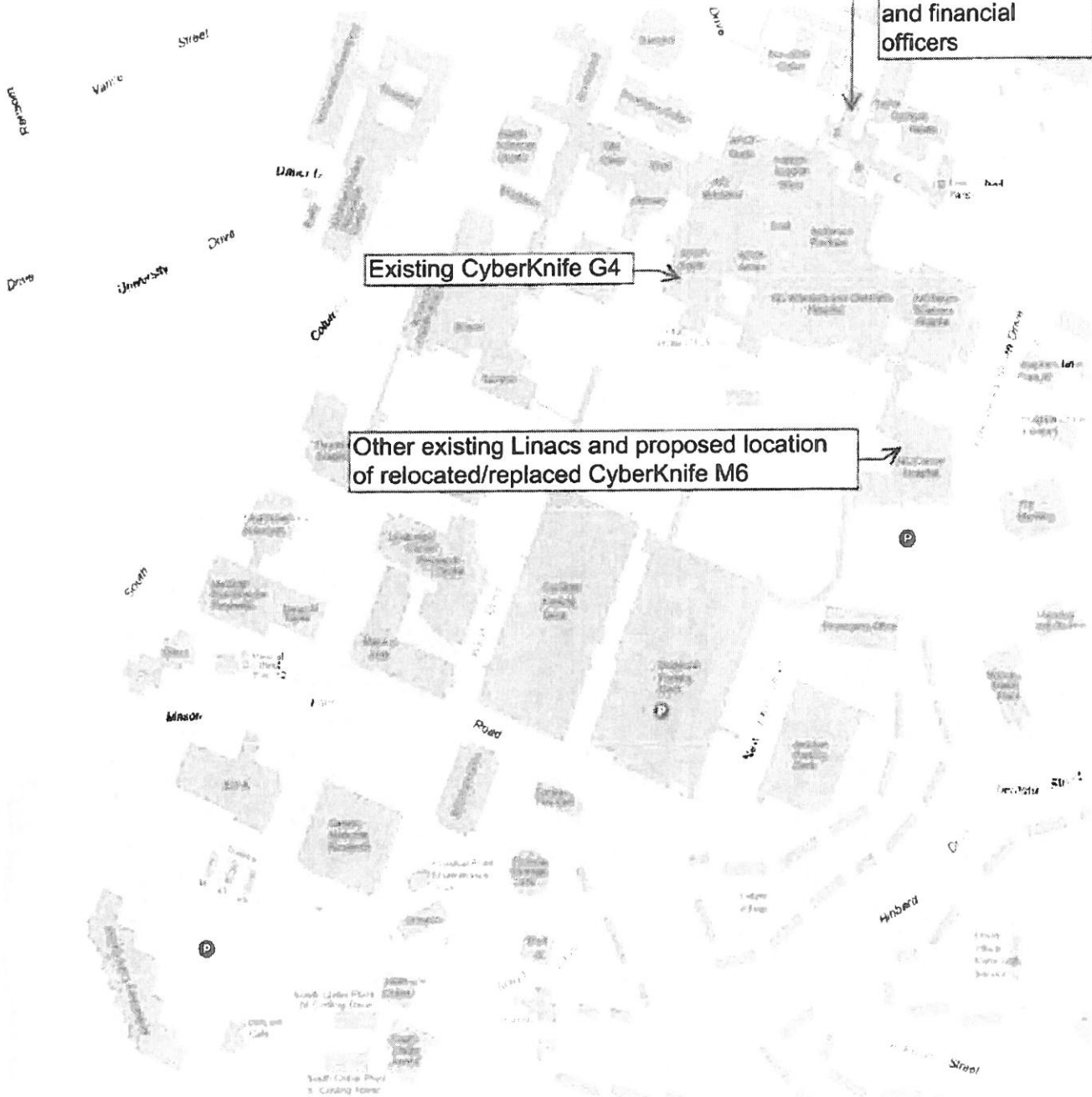


Dee Jay Zerman, System Director
Regulatory Planning
UNC HCS

location of offices
of administrative
and financial
officers

Existing CyberKnife G4

Other existing Linacs and proposed location
of relocated/replaced CyberKnife M6



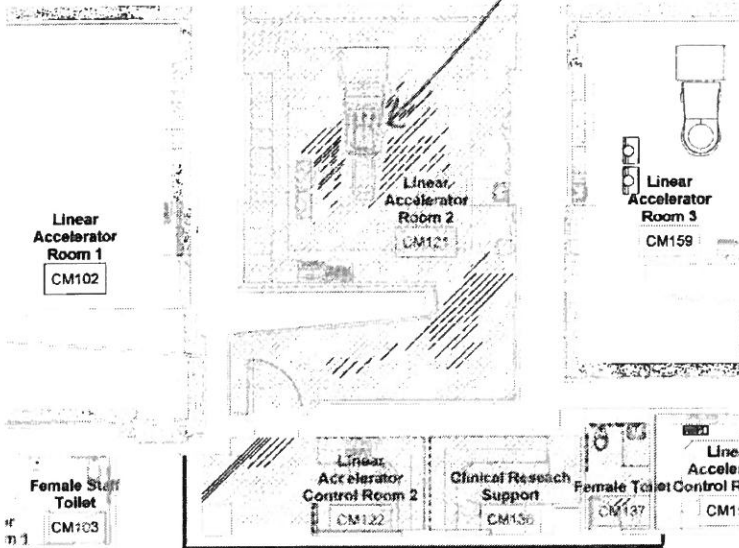
Project Overview

This project is a 1,381sqft cyberknife equipment installation in an existing linear accelerator vault. New finishes and casework are being provided as well.



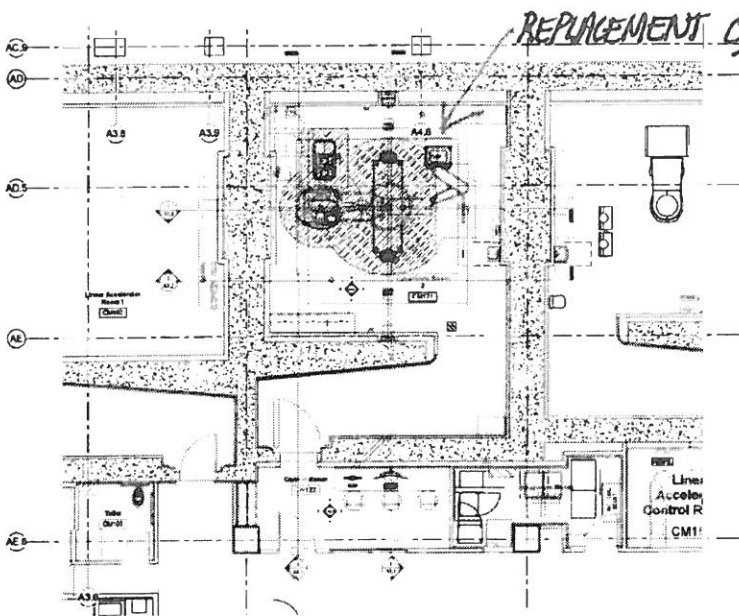
Vault 2 Cyberknife

CANCER HOSPITAL Existing Plan



*THIS EQUIPMENT TUBE
 RELOCATED TO HILLSBOROUGH
 AS PART OF CON PROJECT
 ID# J-11035-15
 & J-11298-17.*

Renovation Plan



Isley Hawkins where great ideas take flight

Architecture

SCOPE OF WORK OVERVIEW

STATE OF NORTH CAROLINA
Department of Health and Human Services
Division of Facility Services

CERTIFICATE OF NEED
for
Project Identification Number J-7626-06
FID#923517

ISSUED TO: University of North Carolina Hospitals at Chapel Hill
101 Manning Drive, Suite 6021, East Wing
Chapel Hill, North Carolina 27514

Pursuant to N.C. Gen. Stat. § 131E-175, et. seq., the North Carolina Department of Health and Human Services hereby authorizes the person or persons named above (the "certificate holder") to develop the certificate of need project identified above. The certificate holder shall develop the project in a manner consistent with the representations in the project application and with the conditions contained herein and shall make good faith efforts to meet the timetable contained herein. The certificate holder shall not exceed the maximum capital expenditure amount specified herein during the development of this project, except as provided by N.C. Gen. Stat. § 131E-176(16)e. The certificate holder shall not transfer or assign this certificate to any other person except as provided in N.C. Gen. Stat. § 131E-189(c). This certificate is valid only for the scope, physical location, and person(s) described herein. The Department may withdraw this certificate pursuant to N.C. Gen. Stat. § 131E-189 for any of the reasons provided in that law.

SCOPE: Acquire a replacement stereotactic radiosurgery linear accelerator/Orange County

CONDITIONS: See Reverse Side

PHYSICAL LOCATION: UNC Hospitals
101 Manning Drive
Chapel Hill, North Carolina 27514

MAXIMUM CAPITAL EXPENDITURE: \$4,510,000

TIMETABLE: See Reverse Side

FIRST PROGRESS REPORT DUE: March 1, 2006

This certificate is effective as of the 28th day of October, 2006.



Chief, Certificate of Need Section
Division of Facility Services

CONDITIONS

1. University of North Carolina Hospitals at Chapel Hill shall materially comply with all representations made in the certificate of need application.
2. University of North Carolina Hospitals at Chapel Hill shall not acquire, as part of this project, any equipment that is not included in the project's proposed capital expenditure in Section VIII of the application or that would otherwise require a certificate of need.
3. University of North Carolina Hospitals at Chapel Hill shall acknowledge acceptance of and agree to comply with all conditions stated herein to the Certificate of Need Section in writing prior to issuance of the certificate of need.

A letter acknowledging acceptance of and agreeing to comply with all conditions stated in the conditional approval letter was received by the Certificate of Need Section on October 23, 2006.

TIMETABLE

Completion of final drawings and specifications	January 3, 2007
Contract Award	January 26, 2007
25% completion of construction	February 6, 2007
50% completion of construction	February 22, 2007
75% completion of construction	March 1, 2007
Completion of construction	March 12, 2007
Order Equipment	January 3, 2007
Operation of Equipment	April 1, 2007

PROPOSED TOTAL CAPITAL COST OF PROJECT

A. Site Costs		
(1) Full purchase price of land		\$ 0
Acres _____ Price per Acre \$ _____		
(2) Closing costs		\$ 0
(3) Site Inspection and Survey		\$ 0
(4) Legal fees and subsoil investigation		\$ 0
(5) Site Preparation Costs		
Soil Borings	\$ 0	
Clearing - Earthwork	\$ 0	
Fine Grade for Slab	\$ 0	
Roads - Paving	\$ 0	
Concrete Sidewalks	\$ 0	
Water and Sewer	\$ 0	
Footing Excavation	\$ 0	
Footing Backfill	\$ 0	
Termite Treatment	\$ 0	
Other (Specify)	\$ 0	
Sub-Total Site Preparation Costs	\$ 0	
(6) Other (Specify)	\$ 0	
(7) Sub-Total Site Costs		\$ 0
B. Construction Contract		
(8) Cost of Materials		
General Requirements	\$ 59,487	
Concrete/Masonry	\$ 98,590	
Woods/Doors & Windows/Finishes	\$ 51,478	
Thermal & Moisture Protection	\$ 0	
Equipment/Specialty Items	\$ 14,694	
Mechanical/Electrical	\$ 167,536	
Other (Unit Strut Support)	\$ 0	
Sub-Total Cost of Materials	\$ 391,805	
(9) Cost of Labor	\$ 587,708	
(10) Other (Specify)	\$ 0	
Firestopping	\$ 0	
Asbestos Abatement	\$ 0	
Window Upgrade	\$ 0	
HVAC Upgrade	\$ 0	
(11) Sub-Total Construction Contract		\$ 979,513
C. Miscellaneous Project Costs		
(12) Building Purchase	\$ 0	
(13) Fixed Equipment Purchase	\$ 2,972,759	
(14) Movable Equipment Purchase	\$ 75,000	
(15) Furniture	\$ 30,000	
(16) Landscaping	\$ 0	
(17) Consultant Fees		
Architect and Engineering Fees	\$ 115,000	
Legal Fees	\$ 0	
Market Analysis	\$ 0	
Other (Structural fee)	\$ 0	
Other (Specify)	\$ 0	
Sub-Total Consultant Fees	\$ 115,000	
(18) Financing Costs (e.g. Bond, Loan, etc.)	\$ 0	
(19) Interest During Construction	\$ 0	
(20) Other (Specify) Contingency		\$ 87,951
(21) Sub-Total Miscellaneous		\$ 3,192,759
(22) Total Capital Cost of Project (Sum A-C above)		\$ 4,270,223

I certify that, to the best of my knowledge, the above construction related costs of the proposed project named above are complete and correct.

Quico Ortega 10/16/2017
 Signature of Licensed Architect or Engineer

Isley Hawkins

Architecture

Isley Hawkins, Inc.
112 S. Duke Street, #5
Durham, NC 27701
919.489.7417
isleyhawkins.com

October 6, 2017

DJ Zerman,
Regulatory Counsel, Strategic Planning
UNC Hospital

Re: **Construction cost certification**
UNC Hospital Vault 2 Cyberknife
SCO# 17-17477-01
FID# 923517
101 Manning Dr. Chapel Hill, NC 27514

Dear Ms. Zerman:

This is to certify that our office has provided the design development construction cost estimate for the project noted above. This estimate is based on schematic design drawings prepared by our office and our consultants. We believe this to be a reasonable construction budget based on generally accepted methods of estimating construction costs and previous experience with similar projects in this facility.

Total Construction cost estimate:		\$	979,513
Labor and Material Costs:			
Material	(@ 40%) =	\$	391,805
Labor	(@ 60%) =	\$	587,708
	Total =	\$	979,513

UNC Hospital Plant Engineering office has represented to me the following as the complete project budget.

Total Construction	\$	979,513
Equipment	\$	3,077,759
Design Fees	\$	115,000
Project Contingency	\$	97,951
UNC Project Budget	\$	4,270,223

Respectfully,



Julie Risk, AIA, NCAEB, LEED AP BD+C, NCIDQ

CC: Jennifer Pavlovich, Project Manager

Nathan Isley AIA LEED AP RGA
J. Malcolm Hawkins AIA EDAC



Isley Hawkins

Architecture

Isley Hawkins, Inc.
112 S. Duke Street, #5
Durham, NC 27701
919.480.7417
isleyhawkins.com

October 6, 2017

DJ Zerman,
Regulatory Counsel, Strategic Planning
UNC Hospital

**Re: Water and Energy Conservation
UNC Hospital Vault 2 Cyberknife
SCO# 17-17477-01
FID# 923517
101 Manning Dr. Chapel Hill, NC 27514**

Dear Ms. Zerman:

I am writing in regards to G.S. 131E-178 which requires a statement and plan regarding Energy and Water Conservation associated with Certificate of Need projects. We will comply with the North Carolina State Building Code and as reasonable and within budget will avail ourselves of sustainable initiatives.

This project is a renovation of existing space, and is air conditioned from the building's existing HVAC system. Water usage is anticipated to be a negligible change. The existing plumbing fixture counts to remain the same. Existing ballasted fluorescent lighting fixtures are scheduled to be replaced with energy efficient LED fixtures. We anticipate a reduction in energy consumption associated with facility lighting usage. The radiology equipment and devices selected by the Owner are beyond our control.

Respectfully,



Julie Risk, AIA, NCAEB, LEED AP BD+C, NCIDQ

CC: Jennifer Pavlovich, Project Manager

Nathan Isley AIA, LEED AP, IIDA
J. Malcolm Hawkins AIA, EDAC





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Accuray System Sales Agreement
 Page 1 of 19

Accuray Incorporated
 1310 Chesapeake Terrace
 Sunnyvale, CA 94089
 USA

Customer Name: UNC Health Care System	
Contact Name: Lawrence Marks, MD	
Contract Number: 05042017BV1-UJNC	
Original Quote Date: 4 May 2017	Revision Date: 30 May 2017
Sales Contact: Bob Vogt	Expiration Date: 4 June 2017 31 Dec 2017

aw

Bill-To: UNC Health Care System
 4400 Emperor Blvd
 Suite 100
 Durham, NC 27703

Site Address: University of North Carolina Hospitals
 NC Clinical Cancer Center
 101 Manning Drive
 Chapel Hill, NC 27514
 USA

This Accuray System Sales Agreement ("Agreement") is provided by Accuray Incorporated ("Accuray") and is only valid for the primary customer named above. This Agreement is non-transferable and not for export outside THE UNITED STATES ("Territory"). Capitalized terms used herein but not otherwise defined shall have the meanings given them in the attached Accuray Terms and Conditions of Sale.

Accuray System

A. Quote

All amounts are quoted in US Dollars.

Product Description	Quantity	Price	Line Total
CyberKnife® F1+ System	1.00	6,650,000.00	6,650,000.00
Additional MultiPlan® Treatment Planning System	2.00	170,000.00	340,000.00
InCise™ Multileaf Collimator	1.00	850,000.00	850,000.00
MultiPlan MD Suite	1.00	110,000.00	110,000.00
PlanTouch™ iPad Plan Review	1.00	115,000.00	115,000.00
Accuray System Subtotal			8,065,000.00
System Discount. Customer shall receive a discount off the Accuray System price if (i) this Agreement is signed and received by Accuray by the Expiration Date and (ii) Accuray receives from Customer the down payment with signed Agreement, as set forth in Section B.1.1 below.			-3,467,241.00
Trade-In Discount. Customer shall be entitled to receive the following discount, subject to "Trade-In System" terms below. If Customer does not satisfy the requirements set forth in the Trade-In System terms below, this discount amount will be added to the last payment due by Customer as detailed below, or if final payment has already been received by Accuray, then Customer agrees to refund this discount amount to Accuray within thirty (30) days			-1,625,000.00
TOTAL DUE (excluding taxes)			2,972,759.00

Trade-in System. In exchange for and as a condition of receiving the Trade-In Discount made available to Customer as set forth in Section A above, Customer acknowledges and agrees that Accuray shall take ownership of the CyberKnife G4 System currently installed at Customer's site ("Existing System"). Customer agrees to



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Accuray System Sales Agreement
Page 2 of 19

cooperate with, and provide reasonable assistance to, Accuray in the decommissioning and de-installation of the Existing System as follows:

1. Customer shall make the Existing System site available to Accuray as reasonably requested by Accuray for the decommissioning and de-installation of the Existing System during the period beginning on the date following "Go Live" of the Accuray FI+ system and ending sixty (60) days thereafter ("Decommissioning Period").
2. Customer shall provide access, facilities and infrastructure to Accuray and its representatives as reasonably requested in order to decommission, de-install and remove the Existing System. Accuray shall de-install the Existing System and remove it from the Customer installation site at its own expense.

If Customer does not permit Accuray to remove the Existing System from the Customer installation site before the Decommissioning Period begins, Customer shall not be entitled to receive the Trade-In Discount and shall pay Accuray the amount equal to the Trade-in Discount amount within thirty (30) days following the Decommissioning Period. Accuray shall not be liable for any delay by Accuray in the installation of the new Accuray System at the newly designated site that is caused as a result of not having the Existing System removed.

Regulatory Notice. If an Accuray Deliverable purchased under this Agreement has not been licensed in accordance with the laws of the Territory, such Accuray Deliverable cannot be shipped until it is licensed or has received necessary regulatory approvals for the Territory. In the event the necessary licenses and regulatory approvals are not received for all Accuray Deliverables, Accuray may deliver a partial shipment to Customer as provided in the attached Accuray Terms and Conditions of Sale.

Configuration Note. Please refer to Attachment A for a description of the base Accuray System as well as additional options available for purchase ("Additional Options").

Base Configuration Protection. Provided this Agreement is signed and received by Accuray by the Expiration Date, if prior to shipment of the Accuray System, Accuray incorporates updates into the base configuration that are different from the current configuration reflected in Attachment A, excluding any new releases of platforms, Accuray will deliver the updated base configuration at no additional charge, in addition to the Additional Options purchased by Customer as indicated above in Section A (*Quote*) of the Agreement. For the avoidance of doubt, if any of the Additional Options selected by Customer in Section A become included in the base configuration, Customer shall not be entitled to any refund or credit and the total amount due will remain unchanged.

B. Pricing and Inclusions

1. **Payment Terms.**

1.1. The Payment Terms below are based on the Total Due above in Section A (*Quote*), excluding any applicable taxes. *All amounts are quoted in US Dollars.*

20 Diamond Points with a total value of \$170,000.00 (1 Diamond point is equal to \$8,500.00) redeemed from Agreement Year 4 (as defined in the Existing Service Agreement) due with signed contract.

\$2,802,050 due upon Acceptance.

"Acceptance" shall be as defined in the attached Accuray Terms and Conditions of Sale.

1.2 **Customer's Creditworthiness.** Accuray's performance under this Agreement is subject to approval of Customer's credit by Accuray.

2. **Shipping Terms.**

2.1. FOB Destination (Incoterms 2010).

2.2. Anticipated delivery 1 June 2018.

3. **Taxes.** Customer is responsible for applicable taxes as set forth in the attached Accuray Terms and Conditions of Sale. If Customer is tax exempt in the Territory, Customer is responsible for providing Accuray with sufficient evidence of Customer's tax exempt status, as detailed in the "*Tax Exempt Status*" section of the attached Accuray Terms and Conditions of Sale.



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Page 3 of 19

4. **Site Preparation and Installation.**
 - 4.1. **Site Preparation.** Site preparation at Customer's expense as specified in the "Site Preparation" section of the attached Accuray Terms and Conditions of Sale.
 - 4.2. **Installation.** Installation included at Accuray's expense as specified in the "Installation" section of the attached Accuray Terms and Conditions of Sale.
 - 4.3. **Rigging and Unloading.** Standard rigging costs are included up to \$8,000.00 as specified in the "Rigging and Unloading" section of the attached Accuray Terms and Conditions of Sale.
 5. **Warranty Period.** The warranty period is for 12 months from the date of Installation but not to exceed 24 months from the date of delivery of the Accuray Deliverables ("Warranty Period"). Warranty includes all parts and labor as specified in the attached Accuray Terms and Conditions of Sale.
 6. **Training.**
 - 6.1. Accuray will provide training for Customer personnel as specified in the "Training" section of the attached Accuray Terms and Conditions of Sale.
 - 6.2. Hotel accommodations and travel costs are not included. Accuray may include meals or refreshments provided onsite during training courses, depending on the course offering. Expenses incurred by Accuray for its employees who provide services on the premises of UNC Health Care System with the written agreement of the parties must be pre-approved and incurred and reimbursed in accordance with the Expense Addendum, attached hereto, and the terms of which are incorporated herein by reference. Invoices submitted to UNC Health Care System for expenses incurred by the Accuray's employees accompanied by supporting documentation, if complete and undisputed, will be paid within thirty (30) days of UNC Health Care System's receipt.
 7. **Contingencies.**
 - 7.1. There are no contingencies.
(See the "Contingencies" section of the attached Accuray Terms and Conditions of Sale for additional contingency details, as applicable.)
 8. **Service Contracts.**
 - 8.1 Any Service Contract must be signed and invoiced separately in order for Customer to receive the selected service.
- C. **Terms and Conditions for Agreement**
1. **Terms and Conditions.** The Accuray Terms and Conditions of Sale attached hereto are final and binding upon Accuray and Customer.
 2. **Notices.** All notices required or permitted under this Agreement shall be in writing and: (a) if delivered in person, or via email, effective immediately, (b) if delivered by a reputable national or international overnight delivery service, effective two (2) business days after deposit with carrier, or (c) if delivered by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All notices shall be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this section.

To Accuray:
Accuray Incorporated
Attention: General Counsel
1310 Chesapeake Terrace
Sunnyvale, CA 94089
USA

To Customer:
University of North Carolina
Health Care System
Attn: Purchasing Dept.
4400 Emperor Blvd
Durham, NC 27703

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their officers, thereunto duly authorized. The parties acknowledge and agree that this Agreement does not become effective until it has been signed by all parties indicated below, however Customer shall be given the benefit of its signature date regardless of the date that Accuray signs.

CUSTOMER

ACCURAY INCORPORATED

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Filed by Accuray Legal:

By: _____

Print Name: _____

Date: _____

Please attach payment to this signed Agreement and forward to:

Accuray Incorporated
ATTN: Sales Operations
1310 Chesapeake Terrace
Sunnyvale, CA 94089
USA

Main: +1.408.716.4600

Fax: +1.408.789.4205

Email: DomesticSalesContracts@accuray.com

SIGNATURE PAGE TO ACCURAY SYSTEM SALES AGREEMENT



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Accuray Terms and Conditions of Sale

1. Definitions. "Accuray Products" means all products manufactured by Accuray Incorporated, ("Accuray"), including, but not limited to, the Accuray System (as defined below) and any other Accuray-produced hardware, software, and firmware. "Accuray Services" means services of Accuray related to the warranty provided herein, but shall not include any services related to a Periodic Maintenance and Service Contract between Customer and Accuray, which shall be governed by the terms of such separate Periodic Maintenance and Service Contract ("Service Contract"). "Accuray System" means the CyberKnife, TomoTherapy or Radixact System provided by Accuray to Customer hereunder as indicated in Section A (Quote) above, which includes component parts produced by other manufacturers. "Accuray Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional Specifications. Such Accuray Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the Accuray Products. For example, an Accuray Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Accuray Updates of the software. "Accuray Upgrade" means a new release of software or a change to the existing hardware, in each case, containing major new features, functionally and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and are designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product. For example, an Accuray Upgrade to software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Accuray Upgrades to software. "Classroom Training" means classroom applications training services that Accuray provides, as applicable and if available, pursuant to Accuray's then-current Classroom Training Policy. "On-Site Follow-Up Training" means support services that Accuray provides, as applicable and if available in the Territory, pursuant to Accuray's then-current On-Site Training Policy after completion of all required Classroom Training Accuray may, in its sole discretion and without notice, amend the manner, frequency, and, if applicable, locations in which it provides training services pursuant to its On-Site Training Policy and Classroom Training Policy. "Specifications" means the user manuals provided by Accuray to Customer in writing, as updated from time to time by Accuray. All Accuray Products, Accuray Services, Accuray Upgrades and Accuray Updates (collectively, "Accuray Deliverables") are furnished only on the terms and conditions stated herein. Any different or additional terms contained in Customer's purchase order or similar documents shall not bind Accuray.

2. Contingencies. If any contingencies are indicated in Section B above, then this Agreement is contingent upon all identified contingencies being satisfied by the date(s) indicated in Section B and upon all payment terms being met. Customer shall send written confirmation to Accuray, in accordance with the "Notice" provisions herein, that each contingency has or has not been satisfied, as the case may be. Such written confirmation shall be sent to Accuray on or before the date indicated for each contingency. This Agreement shall remain contingent through such time, after which, if Accuray does not receive such written confirmation by the date indicated, then the corresponding contingency shall be deemed waived. Upon satisfaction or waiver of all identified contingencies, this Agreement and all of its terms and conditions shall become binding on all parties. Notwithstanding the foregoing, should a contingency require regulatory, Certificate of Need or similar mandatory approval, if Accuray does not receive timely written confirmation of satisfaction of the contingency or Accuray does not approve Customer's written request to extend the contingency deadline, such contingency shall be deemed not satisfied and this Agreement and all of its terms and conditions shall become null and void and thereby automatically terminate. Should this Agreement terminate under this paragraph, upon timely notice from Customer of failure to satisfy this contingency, Accuray shall refund any money paid by Customer within 30 days of Customer's written request.

3. Terms of Payment.**3.1 Purchase Price; Payment Schedule.**

3.1.1 The purchase prices for the Accuray Deliverables are as set forth in Section A above ("Purchase Prices"). Purchase Prices are valid only for the item on which such prices are specified and only until the Expiration Date set forth above. Customer shall pay for the Accuray Deliverables in accordance with the payment schedule set forth in Section B above. If the delivery of an Accuray Deliverable is delayed by Customer for reasons not attributable to Accuray, amounts due on the estimated delivery date specified in Section B above for such deliverable shall become due and payable on such date. If installation or Acceptance (as defined below) is delayed by Customer for reasons not attributable to Accuray, any payment due upon Net 45 days upon receipt of an invoice of the applicable Accuray Deliverable shall be due and payable the earlier of (a) 60 calendar days after delivery or (b) Acceptance.

3.2 Invoices; Late Payments. Accuray shall submit all invoices to Customer 45 days prior to the payment due date. Past due undisputed balances shall bear interest at the rate of 1% per month or, if lower, the maximum amount permitted by applicable law. Accuray may suspend its performance under this Agreement if payments are not made in accordance with the payment schedule set forth in Section B above. Any invoice submitted for services rendered for a given period shall have as a notation the number of labor hours dedicated to that specific period of billing, for payment purposes. Failure to provide such detail, in aggregate, may constitute breach, delay payment and result in termination of the Agreement. Labor hours are

for reference only and will not affect the total amount of the invoice nor the contract value. A labor hour report will be provided at a system level when a contract invoice is received by UNC Health Care System.

3.3 Taxes.

3.3.1 Customer Responsibility. All payments from Customer to Accuray under this Agreement are exclusive of applicable taxes (e.g. sales, use, VAT, rental or similar taxes), duties, license or other fees. If the use or possession of the Accuray Deliverables by Customer pursuant to this Agreement results in the imposition of any applicable taxes, duties, or other fees, or requires the issuance of any permits or licenses, applicable sales and use tax shall be at Customer's expense, and such permits and licenses shall be applied for and maintained by Customer. Any such applicable sales taxes (a) due with respect to payments made Net 45 days upon the receipt of an invoice, and (b) due with respect to payments made following the date of delivery, shall be due together with payment of the underlying amount. Customer shall not be responsible for any other taxes, including but not limited to, personal property tax and income tax assessed on Accuray or the Products, Products, hardware, software, and/or equipment provided under this Agreement.

3.3.2 Tax Exempt Status. Customer is responsible for providing Accuray with sufficient evidence of tax exempt status in the state where the Accuray System is to be installed prior to delivery of the Accuray System. If sufficient evidence is not provided, Accuray will invoice Customer as necessary for any otherwise applicable taxes and, if applicable, Customer shall reimburse Accuray for costs incurred to obtain tax refunds from relevant tax authorities resulting from Customer's failure to timely provide evidence of its tax exempt status.

3.4 Method of Payment. Unless otherwise specified in Section B above, all payments by Customer shall be made by wire transfer or check. Credit card payments will not be accepted by Accuray unless Customer agrees to pay a convenience fee for the transaction.

3.5 Security Interest. Until the Purchase Price is paid in full to Accuray, Accuray shall retain ownership rights in all Accuray Deliverables and shall have a right to claim proceeds generated by Customer therefrom in order to secure payment for such deliverables by Customer (collectively, a "Security Interest"), it being understood that such Security Interest hereby granted by Customer to Accuray includes, but is not limited to, the retention of all right in and title to the Accuray Deliverables delivered to Customer. Customer shall execute upon Accuray's request, and permit Accuray to file, documents and related filings and recordings required to evidence Accuray's Security Interest in the Accuray Deliverables and related proceeds, including without limitation the right of Accuray to repossess the Accuray Deliverables in the event Customer defaults on its payment obligations hereunder, and take all other actions necessary for Accuray to perfect the foregoing Security Interest and realize the full benefit of protections available under applicable laws in the jurisdiction where the Accuray System is installed in order to secure Accuray's interest in the Accuray Deliverables until payment is received in full from



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Customer shall maintain the Accuray Deliverables in good condition and keep such deliverables free of any liens, encumbrances and other third party rights until payment to Accuray is made in full. In the event of a third party claim against the Accuray Deliverables while subject to Accuray's Security Interest, Customer shall immediately notify Accuray of such claim and advise the third party of Accuray's ownership interest in the Accuray Deliverables. If Customer breaches this Agreement due to failure to satisfy its payment obligations as provided herein, Customer shall, upon written demand by Accuray, return to Accuray the Accuray Deliverables for which Customer has failed to make payment. All Security Interest shall be released by Accuray, and title to the Accuray Deliverables (with the exception of licensed intellectual property products) shall pass directly from Accuray to Customer, free of any charges, restrictions or encumbrances, once Accuray has received all payments owed hereunder for all Accuray Deliverables.

3.6 Purchase of Supplies or Consumables. If Customer wishes to purchase any medical supplies, fiducials or other consumables from Accuray, Customer shall order such items, if available, at Accuray's website for such purchases (<http://www accurayorders.com>). Customer may also issue a purchase order to Accuray for such supplies or consumables by emailing a copy of the purchase order to Orders@accuray.com. The payment terms for such supplies or consumables shall be as set forth on Accuray's website.

3.7

3.8 Expense Reimbursement by Accuray. In the event that Accuray agrees to reimburse Customer for any costs under this Agreement, Customer agrees that (a) any such costs must be incurred in accordance with Accuray's standard expense policies and (b) Customer must submit all reimbursement requests, including invoices or other supporting documentation as reasonably requested by Accuray, within 60 days of such costs being incurred.

4. Shipment

4.1 Shipment; Risk of Loss. Customer shall inspect arriving shipments and report any visible damage or shortages to Accuray within 48 hours after installation and any concealed damage within 10 days after installation. If Customer does not report damage in accordance with the previous sentence, Accuray shall have no liability to Customer or otherwise with respect to such damage. For shipments outside the United States, Customer shall procure all necessary permits and licenses for such shipments and for compliance with any government regulations applicable at the destination. Risk of loss and/or damage shall pass to Customer upon delivery of the Accuray Deliverable. The anticipated delivery date set forth in Section B above, or otherwise agreed upon in writing by the parties is approximate. Accuray shall use reasonable efforts to meet such delivery date but shall not be liable for delays.

4.2 Partial Shipment. If an Accuray Deliverable purchased pursuant to this Agreement is not licensed in accordance with the laws of the Territory, such Accuray Deliverable cannot be shipped until it is licensed or has received necessary regulatory approvals for the

Territory. In the event the necessary licenses and regulatory approvals are not received for all Accuray Deliverables by the scheduled Accuray System delivery date, but approval is received for the base Accuray System, Accuray shall deliver the base Accuray System to Customer together with any additional options selected by Customer for which regulatory approvals have been received. Accuray shall refund to Customer amounts paid for such undelivered options within 30 days of delivery of the base Accuray System, or, to the extent Customer has not yet paid for such undelivered options, the price for such undelivered options shall no longer be due to Accuray.

4.3 Delayed Deliverables. If an Accuray Deliverable purchased under this Agreement is not available for shipment with the Accuray System (a "Delayed Deliverable"), Accuray will deliver, and Customer shall accept delivery of, the Accuray System with shipment of the Delayed Deliverable(s) to follow once available. In the event that payment of the Purchase Price is due in full upon delivery of the Accuray System, in consideration for the Delayed Deliverable(s), Customer may delay payment of the applicable pro rata portion of the Purchase Price equal to the percentage calculated by dividing the Delayed Deliverable(s) list price by the "Accuray System Subtotal" reflected in Section A above ("Delayed Payment"). Customer shall pay Accuray any Delayed Payment amount within forty-five (45) days upon receipt of an invoice for the Delayed Deliverable(s). For the avoidance of doubt, Delayed Deliverable(s) shall not prevent demonstration of Acceptance as provided in Section 8 (Acceptance) below.

5. Installation.

5.1 Installation by Accuray. Provided that Accuray is responsible for installation pursuant to Section B above, the following Sections 5.1.1 and 5.1.2 shall apply.

5.1.1 Installation Process. Accuray will notify Customer approximately 90 calendar days prior to the scheduled delivery of the Accuray System to coordinate installation details. Installation will be performed by Accuray. Accuray will assemble and test the Accuray System. Operation of the Accuray System by Accuray, as necessary for completion of installation or acceptance tests, is subject to Customer providing adequate radiation shielding protection and other site preparations required for the safety and protection of personnel and the Accuray Deliverables. Upon completion of the installation, Accuray's representatives will demonstrate proper machine operation by performing Accuray's acceptance test procedure. For clarity, Accuray is not responsible for any commissioning of the Accuray System, including, but not limited to, any calibration or radiation surveys. Such commissioning shall be the sole responsibility of Customer. The quoted Accuray System price includes standard installation services only. Any additional time or resources required or delay in installation of the Accuray System resulting from delay in completing site preparations, the condition or location of the installation premises, any utilities or materials supplied or to be supplied by Customer, or any other cause beyond Accuray's reasonable control, will be at Customer's expense.

5.1.2 Rigging and Unloading. Accuray will locate and contract with a rigger or local licensed contractor to

provide standard labor and rigging services necessary to unload and rig in the pre-install kit and the rest of the Accuray System from the transport vehicle to its final position. Standard labor and rigging services are defined as a typical rig route from the delivery truck to the Accuray System suite area, normally taking no more than six (6) hours. Accuray shall be responsible for standard rigging costs and expenses as indicated in Section B above; provided, however that the cost of any rigging (winches, cranes, night delivery, etc.) that exceeds Accuray's standard definition will be Customer's responsibility. An Accuray representative will monitor the movement, final positioning and connection of the Accuray System.

5.2 Site Preparation. Customer is solely responsible for preparing its site for installation of the Accuray System according to the specifications supplied by Accuray. Customer shall provide Accuray with full, free, immediate, and unobstructed access to the installation site. Customer will be responsible, at its own expense, for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, remote access to the Accuray System, access to the installation site, and all other requirements of applicable law completed on the estimated delivery date and ready for installation of the Accuray System. Accuray will have no responsibility for any matter affecting or related to the adequacy of architectural design, utility service design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers, and other safety devices must be approved by an expert in the radiation field and shall be Customer's responsibility. Customer shall make any necessary arrangements with trade unions or other third parties that may interfere (or threaten to interfere) with the installation of the Accuray System.

5.3 Customer Representative. Customer shall provide a representative who shall be present at all times during the installation and be capable of assisting where necessary. When his representative is present and assistance from Customer is not available when required, Accuray (if responsible for installation) may suspend the installation until an appropriate Customer representative is made consistently available.

5.4 Site Location. Customer agrees that the Accuray System will remain at the site at which Accuray (or an Accuray trained engineer) installs the Accuray System, and will not be re-located without the prior written consent of Accuray, such consent not to be unreasonably withheld.

5.5 Network Access. Customer shall provide Accuray with remote access to the Accuray System and data (subject to Section 18 (Patient Information) below), including without limitation, access to Accuray's CyberKnife Access™ Remote Service Tool, TomoLink™ Remote Service Tool, or iLink™ Remote Service Tool, as applicable, in order to allow Accuray to provide diagnostic services and help maintain the Accuray System. Customer acknowledges and understands that such remote access may result in Accuray having access to protected health information.

5.6 Deferred Delivery or Installation. If Customer is unable to accept delivery on the original scheduled delivery date (or any rescheduled delivery date), or if



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installation (or commencement of installation) is delayed for reasons beyond Accuray's control, Accuray may place the Accuray Products in storage (in Accuray's facility or in a warehouse) at Customer's expense (including, but not limited to, insurance and demurrage charges). Storage charges will be billed to Customer monthly, and Customer will pay all such invoices upon receipt.

6. Training.

6.1 Training. The Accuray training program for a new Accuray System shall include: (a) Product Training, (b) Clinical Training, and (c) On-site Training during first patient treatment ("Go Live Training") (collectively, "New System Implementation Training") as each is described below. Customer shall be responsible for the travel and living expenses of all Customer personnel sent for training. Accuray will provide Customer with an aggregate of twenty (20) seats to be used for New System Implementation Training ("New System Training Seats"). Each New System Training Seat will entitle Customer to enroll one (1) Customer personnel in one (1) New System Implementation Training course (Product Training, Clinical Training, or Go Live Training). New System Training Seats may only be used for New System Implementation Training and any New System Training Seats not used by one hundred and twenty (120) days following Acceptance, will automatically expire without any refund or other compensation to Customer.

6.2 Training Framework and Restrictions.

6.2.1 Customer shall use New System Training Seats to send, at a minimum, a core group of participants as prescribed by Accuray's Customer Training Department (the "Core Group") for Product Training prior to Go Live Training. In addition, one (1) enrollment in each of the Product Training Courses specified in Section 6.3.2 must be completed by Customer personnel prior to Go Live Training.

6.2.2 Training is conducted in English language only. In the event that Customer personnel are not fluent in English, Accuray shall arrange for an interpreter to be available for the applicable Training. Such interpreters shall be qualified to perform interpretation and familiar with the terminology involved. Customer shall notify Accuray in advance if translation services are needed. Customer shall be responsible for all interpretation and translation expenses.

6.3 Product Training.

6.3.1 Product Training will occur at an Accuray designated training facility. At a minimum, a member of the Core Group must one (1) enrollment in each of the following courses, comprising the "Core Curriculum," prior to Go Live Training:

- a. Core Physics course;
- b. Core Treatment Delivery course;
- c. Core Treatment Planning course; and
- d. Core Physician Training course (required for CyberKnife Systems only).

6.3.2 Each of the courses specified above must be completed by at least one (1) Core Group member prior to Go Live Training, provided, Customer may elect to send different members of Customer's Core Group to each of the Core Curriculum courses; however, Accuray strongly recommends that Customer have multiple team members attend each course.

6.4 Clinical Training. Accuray offers various Clinical Training Programs to meet the needs of Customer personnel, though such training will generally occur at an operating Accuray System center selected by Accuray, will involve clinical interaction with personnel at such center, and may include an opportunity to witness actual patient treatment. Participation in Clinical Training is not required; however, Accuray strongly recommends that Customer send its personnel to one of the Clinical Training Programs. All Customer personnel sent to Clinical Training must meet the registration requirements and prerequisites for the desired Clinical Training Program.

6.5 Go Live Training.

6.5.1 At its sole cost, Accuray shall provide an Accuray trainer to assist with the technical use of the Accuray System at Customer's site during the scheduled first patient treatment. Customer must use one New System Training Seat for each Customer personnel that attends Go Live Training.

6.5.2 Completion of the Product Training requirements as set forth in Section 6.3 above is a prerequisite for Accuray to provide Go Live Training at Customer's site.

6.5.3 Accuray shall have the right to reschedule such Go Live Training in the event that Customer has not completed the Product Training requirements prior to the first patient treatment.

6.5.4 Customer shall attend Go Live Training concurrently with first patient treatment and shall not perform first patient treatment independent of Go Live Training.

6.6 In-Country Product Training. If Customer personnel are precluded from attending product training courses conducted at Accuray's designated training facilities due to specific travel or visa restrictions, as reasonably determined by Accuray, Customer shall be required to purchase supplemental training support package(s) at an additional cost to account for increased costs incurred by Accuray to conduct in-country product training courses for Customer personnel ("In-Country Training"); provided, however, that the availability of such In-Country Training is subject to prior approval of Accuray training management as determined in its sole discretion.

6.7 Additional Training. Following Go Live Training and continuing until the end of the Warranty Period, Customer may, subject to availability and without charge, (a) enroll Customer's personnel in Accuray's training courses to be conducted from time to time at Accuray facilities or such other locations as designated by Accuray, or (b) request On-Site Follow-Up Training. Any such training must be completed during the Warranty Period. In addition, Customer may also be entitled to receive additional training pursuant to the terms and conditions set forth in any then-current Service Contract between Accuray and Customer. The list of available training courses and their requirements and pre-requisites is available on Accuray's then-current Training Price List.

6.8 Credentials. Customer shall determine and verify any necessary credentials of any personnel that Customer sends for training on the Accuray System. Accuray shall not be responsible for and will not in any way determine, assess or verify any necessary credentials of any personnel that Customer sends for

training on the Accuray System. For clarity, proctoring and credentialing of physicians and medical staff is the responsibility of Customer and should be performed separately from Accuray training according to the policies and procedures of the particular Customer or affiliated hospital, as applicable.

6.9 Qualification. Accuray strongly recommends that any Customer personnel who will be involved with the Accuray System attend the training programs offered by Accuray. However, Customer shall have the sole responsibility for ensuring that any Customer personnel are appropriately trained with respect to any Accuray Deliverables, and Accuray shall not be responsible for any such determinations.

7. Calibration and Local Requirements.

7.1 Calibration. Customer shall be solely responsible for all Accuray System commissioning and calibration. The dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Accuray System for patient treatment. Customer shall be responsible for quality assurance testing and calibrating the Accuray System regularly. Customer also shall be responsible for radiation surveys which may be required by applicable law or regulation or which may be necessary to establish that radiation does not exceed safe levels. Accuray has no responsibility for any such commissioning, quality assurance testing, calibration or radiation surveys.

7.2 Pre-Requirement to First Patient Treatment. Proper commissioning, calibration and quality assurance testing ("QA") of the Accuray System are necessary prerequisites to the first patient treatment. Accuray has the right to delay the first patient treatment in the event that, in Accuray's sole opinion, there is not sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Accuray System.

7.3 Local Requirements. Customer shall be responsible for obtaining all permits and for meeting all requirements relating to codes, registration, regulations and ordinances applicable to Customer's use of the Accuray System. Accuray has no responsibility for compliance of the Accuray Deliverables with such requirements.

8. Acceptance. "Acceptance" of the Accuray System shall occur upon the earlier of (a) completion by Accuray or the entity installing the Accuray System of Accuray's acceptance test procedure that demonstrates that the Accuray System substantially conforms to the Specifications, (b) execution of Accuray's acceptance form by Customer, or (c) first patient treatment using the Accuray System. In no event shall Customer or its agents use the Accuray System (or any portion thereof) for any purpose before Acceptance thereof without the express written approval of Accuray. Customer shall be solely responsible and hold Accuray harmless from any such use.

9. Indemnity.

9.1 Indemnity. To the extent permitted under applicable law, if it is determined by a court of competent jurisdiction in accordance with applicable law that any fault, neglect, or material omission of either party, its employees, agents, or subcontractors substantially contributes to damage or injury to third



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parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall indemnify and hold the other party harmless from any liability or damages arising out of such fault or neglect. Notwithstanding the foregoing, Accuray shall have no responsibility whatsoever for, and, to the extent permitted by law, Customer shall indemnify and hold Accuray harmless from, all damage or injury to third parties which results from or relates to (a) the use, operation or service of any Accuray Deliverable by anyone other than Accuray personnel prior to Acceptance and completion of the radiation survey by Customer, (b) any use, operation or service of any Accuray Deliverable by a party not properly trained to use, operate or service the Accuray Deliverable by Accuray, (c) any use by Customer or its agents of an Accuray Deliverable contrary to any written warning or instruction given by Accuray to Customer, or (d) any non-Accuray design, manufacture, or installation of any Accuray Deliverable or any custom design, manufacture or installation by Accuray that is performed pursuant to Customer's specifications, designs or plans. The requirements of this Section will survive the expiration or termination of this Agreement.

9.2 Intellectual Property Rights Indemnity.

9.2.1 Indemnity. Accuray shall, at its own expense, defend any action brought against Customer with respect to a claim by a third party that the design or manufacture of any Accuray Deliverable infringes upon any valid patent or other intellectual property right of the country in which the Accuray Deliverable is installed, and shall pay any damages awarded by a court arising from such claim, provided Customer gives Accuray prompt written notice of such claim and full authority, information and assistance in settling or defending such claim.

9.2.2 Certain Remedies. If a court judgment prohibits Customer's continued use of any Accuray Deliverable, or if at any time Accuray determines that any Accuray Deliverable may become subject to a cause of action for infringement, Accuray may at its expense either (a) procure a license to enable Customer to continue using such Accuray Deliverable, (b) replace such Accuray Deliverable with a non-infringing Accuray Deliverable, (c) remove such Accuray Deliverable and refund a pro-rated portion of the Purchase Price paid by Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance (i.e., removal of the Accuray Deliverable at the end of the first year after Acceptance would result in a refund of 80% of the Purchase Price), or (d) modify the Accuray Deliverable so it becomes non-infringing. Accuray shall have no liability hereunder with respect to any claims settled by Customer without Accuray's prior written consent.

9.2.3 Exclusion. Accuray excludes from any liability hereunder, and, to the extent permitted by law, Customer shall indemnify and hold Accuray harmless from and against, any expense, loss or liability resulting from claimed infringement of any third party intellectual property rights: (a) arising from the use of an Accuray Deliverable other than in accordance with the Specifications, (b) based on the combination of equipment, processes, programming applications or materials not furnished by Accuray with the Accuray Deliverables, (c) arising out of compliance by Accuray

with Customer's designs, specifications or instructions, (d) incurred as a result of Customer's continued use of an Accuray Deliverable after Accuray had recommended in writing that Customer suspend such use, or (e) arising out of any modification of an Accuray Deliverable, except for modifications performed directly by Accuray or pursuant to Accuray's instructions. This Section 9 states Accuray's entire liability for any claim based upon or related to any alleged infringement by an Accuray Deliverable of any intellectual property rights.

10. Warranty.

10.1 Warranty. Accuray warrants that (a) the hardware components of the Accuray Deliverables will be free from defects in material and workmanship and (b) the hardware and software components of the Accuray Deliverables will operate substantially in accordance with the Specifications, in each case during the Warranty Period as defined in Section 8 above. Any service with respect to Accuray Deliverables provided by Accuray after the Warranty Period shall be provided in accordance with the terms of a Service Contract if one is executed by the parties.

10.2 Warranty Remedy. If Customer notifies Accuray during the Warranty Period of a defect in an Accuray Deliverable that causes such deliverable to fail to conform to the foregoing warranty, Accuray shall, at its option, either repair or replace the defective deliverable, or, if in Accuray's opinion such repair or replacement is not commercially reasonable, refund a pro-rated portion of the price paid by Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance. Warranty service will be performed during Accuray's normal business hours. In the event it is not possible to complete warranty service within normal business hours, or in the event Customer specifically requests that warranty service be performed outside of Accuray's normal business hours, Customer agrees to pay the standard Accuray service rates in effect for such services. Accuray's normal business hours is 8:00 AM to 9:00 PM local time Monday through Friday (excluding federally or nationally mandated holidays) at the system site. This Section 10.2 sets forth Customer's only remedies with respect to a breach of the warranty specified in Section 10.1. In any event, warranty remedies are subject to the provisions of Section 13 (Damages).

10.3 Conservation of Materials. In the interests of conservation of scarce materials and efficient utilization of high value parts, Accuray Deliverables may contain re-manufactured parts. Such parts are subject to the same standards of quality control applied to other parts and are covered by the warranty in this Section 10.

10.4 Scope of Warranty. The warranty services described in this Section 10 shall not apply to defects or non-conformities caused by: (a) Customer's abuse, accident, misuse or neglect of an Accuray Deliverable; (b) Customer's modification of an Accuray Deliverable (including any software therein) without Accuray's express written authorization; (c) Customer's use of an Accuray Deliverable in an operating environment other than the operating environment described in the Specifications; (d) any component of an Accuray Deliverable that has been superseded by an update made available to Customer without charge by Accuray; (e) computer viruses which adversely affect

an Accuray Deliverable; (f) defects, problems, or failures created by third party products introduced by Customer (except those comprising parts or components of an Accuray Deliverable) or their interface with Accuray Deliverables; or (g) normal wear and tear. In-warranty repair of replaced parts are warranted only for the unexpired portion of the original Warranty Period.

10.5 Transfer. If Customer transfers, relocates, sells or assigns the Accuray System, all Accuray warranty obligations will terminate unless Customer receives the prior written consent of Accuray for the transfer, relocation, sale or assignment. Upon any transfer or relocation, the Accuray System must be inspected and certified by Accuray as being in compliance with all Specifications, and Customer will compensate Accuray for such inspection services at then prevailing service rates.

10.6 Other Warranties. TO THE EXTENT PERMITTED BY LAW, EXCEPT AS SET FORTH IN THIS SECTION 10, ACCURAY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

11. Service.

11.1 Service Contracts. Accuray offers various Service Contracts that cover the base Accuray System and any Additional Options purchased by Customer. The terms of Accuray's Service Contracts, to be signed and invoiced separately by Accuray, apply to Accuray's provision of corrective and scheduled maintenance and support. Customer expressly acknowledges and agrees that in order to receive the applicable advantages of any Service Contract, Customer must sign and Accuray must receive such Service Contract prior to the date that Customer's Accuray System is installed. Prices are subject to change and Customer will be offered Service Contract options at Accuray's then-current prices at the time the Service Contract is signed by the parties; provided, however, that if Customer selected a service option at the time of Accuray System purchase, Accuray will honor the price indicated for the selected service option up to the time of installation.

11.2 No Service Selected. If Customer does not execute a Service Contract prior to the expiration of the Warranty Period, then following the Warranty Period, Customer shall be charged at Accuray's then-current time and materials rate plus any applicable overtime charges for any service provided by Accuray, as determined in accordance with local laws, plus the cost of materials and parts. Additionally, if Customer does not execute a Service Contract, Customer shall not be entitled to receive, and Accuray is not obligated to provide, bug fixes or updates to Accuray System software or hardware, which must be purchased by Customer separately subject to Accuray's then current pricing.

12. Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ACCURAY BE LIABLE FOR INCIDENTAL, PUNITIVE, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER MATERIAL OR NOT, EVEN IF ADVISED OF THE POSSIBILITY



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OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA OR MORAL PREJUDICE. ACCURAY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE PAYMENT RECEIVED BY ACCURAY FOR THE ACCURAY DELIVERABLE RESULTING IN THE LOSS OR DAMAGE CLAIMED.

13. Intellectual Property Ownership and Software License. Accuray and its licensors retain all intellectual property rights in the Accuray Deliverables. All rights in intellectual property not expressly granted hereunder are reserved by the owner of such intellectual property. Accuray hereby grants Customer a nonexclusive, non-transferable, nonsub licensable, royalty-free right to use the software provided in connection with the Accuray Deliverables ("Software") only in machine readable form and only in combination with the Accuray Deliverable with which such Software is provided, commencing upon Acceptance and for so long as Customer owns the Accuray System; provided that Accuray may terminate this license in the event of any default by Customer. Customer agrees to return the Software and any copies thereof to Accuray immediately upon expiration or termination of the license. The license granted to Customer does not include any right to use the Software for purposes other than for operation of the Accuray System, nor does it include the right to copy, sell, assign, transfer, sublicense or prepare derivative works from the Software for any purpose without the prior written consent of Accuray. Customer shall not copy, decompile or reverse engineer the Software in whole or in part, and Customer shall not disclose or provide the Software, or any portion thereof, to any third party. If Customer modifies the Software in any manner, all warranties associated with the Software and the Accuray System shall become null and void.

14. Trademarks

Accuray Incorporated is the owner of the CyberKnife® and TomoTherapy® trademarks and related trademarks in the U.S. and around the world. If Customer wishes to use Accuray Incorporated trademarks in association with a business name and/or domain name, Accuray Incorporated requires that Customer execute Accuray Incorporated's standard royalty-free Trademark License Agreement specifying the requirements for and the nature of the acceptable use. Without the necessary license, Customer is not entitled to (a) use the Accuray Incorporated trademarks with a business name or domain name, or (b) otherwise use language which would suggest a license with Accuray Incorporated.

15. Remote Software Solutions. In addition to the provisions of Section 14 (*Intellectual Property Ownership and Software License*) which apply to Software licensed from Accuray, the following additional provisions apply with respect to customers purchasing Accuray Remote Software Solutions software and products (the "**Remote Products**"):

15.1 For customers purchasing Remote Products, Accuray will enable a secure network connection (the "**Telecommunications Link**") between each Accuray System workstation (each a "**Workstation**") and the Accuray computer systems (the "**Accuray Network**"). Accuray and Customer will identify the specific persons authorized by Accuray to use the Accuray

Network for remote access to Workstations and authorized peripheral devices based on the number of licenses purchased by Customer. Such authorized individuals may be employees, independent contractors, or persons otherwise affiliated with Customer (e.g., a physician with staff privileges or a referring physician) (each such authorized individual is a "**Remote Access User**"). Accuray will establish, configure and provide the authorizations necessary for each Remote Access User to use the Accuray Network to access designated Workstations and authorized peripheral devices, if applicable, at Customer's facility (such authorization, for each Remote Access User, is a "**Remote Access License**"), as well as provide instructions to Customer to add or delete Remote Access Users on a going forward basis as necessary.

15.2 Any issues relating to the Workstation or Accuray System, including the Remote Products, will be addressed according to the limited warranty applicable to the Accuray System with which the Remote Products are purchased, or according to any Service Contract that is applicable to the Accuray System with which the Remote Products will be installed and utilized. It is expressly agreed between the parties that (a) any defect or deficiency in any third party products not provided by Accuray shall not be subject to any warranties provided hereunder and shall be the responsibility of such third party provider, and (b) any failure of the Telecommunications Link or the Remote Products shall not constitute "downtime" under any applicable warranty or Service Contract between Customer and Accuray so long as Customer can still perform patient treatment plans on the local Workstations.

15.3 Customer must notify Accuray of any changes to the Telecommunications Link or Accuray equipment that may affect operation with the Accuray Network. An example would be TCP/IP address changes. Failure to inform Accuray may result in Customer being responsible for any reasonable charges incurred to resolve the problem. Customer will assume responsibility for any costs associated with relocation of a circuit or other required modifications to Customer's IT infrastructure.

15.4 Customer agrees to use the Remote Products only for the purposes and in the manner for which they are intended and in accordance with any applicable laws or regulations and recommendations of the manufacturer and/or Accuray. If Customer uses the Remote Products to transfer or transmit any data that includes Confidential Information or Patient Information (as defined below), it is Customer's sole responsibility to ensure that such transmission is done only in accordance with any applicable laws or regulations regarding such transmission.

15.5 The provision of the Remote Products by Accuray to Customer do not require access to or transmission of any Patient Information. To the extent possible, Customer shall not provide or make available to Accuray, its employees, subcontractors or agents any such information in relation to the Remote Products.

16. Confidentiality. To the extent permitted by law, all drawings, designs, specifications, manuals, software and other non-public information furnished to Customer by Accuray hereunder shall remain the confidential and proprietary property of Accuray ("**Confidential Information**"). All such information,

except as may be found in the public domain, shall be held in confidence by Customer and shall not be disclosed by Customer to any third parties or used by Customer other than in its operation of the Accuray Deliverables in accordance with the Specifications.

16.1 Customer Confidential Information Protected by Law. For purposes of this Agreement, "Customer Confidential Information" shall include information whose confidentiality Customer is obligated by federal or state law to protect (including patient information and employee information) and other confidential financial and business information. Accuray agrees to hold Customer Confidential Information in strictest confidence and (a) to use any Customer Confidential Information disclosed to it solely for the purpose required in connection with the business relationship of the parties as expressed in this Agreement; (b) not to disclose any Customer Confidential Information to any person or entity other than its agents, employees, or representatives who have a need to know such information and in accordance with the provisions of this Section and in accordance with Accuray obligations under state and federal law; (c) not to reproduce, distribute, or otherwise disseminate Customer Confidential Information; and (d) to return Customer Confidential Information to Customer upon its request or upon the termination of this Agreement, whichever occurs first.

Accuray agrees to use commercially reasonable efforts to incorporate all of the confidentiality protections described in this Section into all contracts it enters into with third parties for purposes of carrying out its obligations under this Agreement. Accuray will use commercially reasonable efforts to ensure that its obligations regarding Customer Confidential Information will be made known to and honored by its agents, employees, and representatives; by its third-party suppliers and their agents, employees, and representatives; and by any subsidiary company, parent company, or company related to such party by common ownership, and its agents, employees, and representatives. Subject to Section 12 above, Accuray further agrees to indemnify and hold harmless Customer and its affiliates, officers, and directors, from any costs, claims, liability or damage, including attorneys' fees and court costs, that are caused by or arise out of any disclosure of Customer's Confidential Information by Accuray or any of its employees, agents, and representatives, or by any of the entities referenced above in this paragraph.

The obligations of Accuray and its employees, agents, and representatives, and any subsidiary company, parent company, or company related to such party by common ownership, and its agents, employees, and representatives, under this Section shall survive the expiration, termination, or cancellation of this Agreement and/or the business relationship of the parties, and shall continue to bind these entities. Except under the conditions specified in this Section, Customer Confidential Information shall not be disclosed at any time following the execution of this Agreement. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their permitted successors and assigns.

17. Insurance. Accuray will purchase and maintain at all times during the term of this Agreement through an insurer with an A.M. Best rating of "A" or better.



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Providing and maintaining adequate insurance coverage is a material obligation of Accuray. All such insurance shall meet all laws of the State of North Carolina. Such insurance coverage shall be obtained from companies that are authorized to provide such coverage and that are authorized by the Commissioner of Insurance to do business in North Carolina. Accuray shall at all times comply with the terms of such insurance policies, and all requirements of the insurer under any such insurance policies, except as they may conflict with existing North Carolina laws or this Agreement.

Accuray will notify Customer at least thirty (30) business days prior to the termination, cancellation, lapse, or reduction of such insurance. Accuray will notify Customer as soon as practicable of its receipt of notice that a claim or lawsuit has been filed against it, its employees, agents, or representatives arising out of the Accuray Deliverables provided under this Agreement. In that event, Accuray will provide to Customer all non-privileged information concerning such claim or lawsuit upon Customer's request.

Accuray will name Customer as an additional insured under its Comprehensive General Liability and Umbrella Liability Insurance policies and provide a copy of its Certificate of Coverage upon request. This Section will survive the expiration or termination of this Agreement.

Insurance will include the following minimum coverages:

17.1 Workers' Compensation - To the extent Accuray's employees will be physically present on Customer facilities in order to comply with the terms of this Agreement, Accuray shall provide and maintain Worker's Compensation Insurance, as required by the laws of North Carolina, covering all of Accuray's employees who are engaged in any work under this Agreement. If any work is subcontracted, Accuray shall require the subcontractor to provide the same coverage for any of its employees engaged in any work under this Agreement.

17.2 Comprehensive General Liability - General Liability Coverage on a Comprehensive Broad Form on an occurrence basis in the minimum amount of \$1,000,000 per occurrence and \$2,000,000 annual aggregate (Defense cost shall be in excess of the limit of liability). In the event that Accuray maintains a "claims made" policy instead of an "occurrence" policy, it shall purchase prior to the termination of such insurance, "Tail" coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims made policy.

17.3 Automobile Liability Insurance - To include liability coverage, covering all owned, hired and non-owned vehicles, used in connection with this Agreement. The minimum combined single limit shall be \$150,000.00 bodily injury and property damage, \$150,000.00 uninsured/under insured motorist, and \$1,000.00 medical payment.

17.4 Professional Liability Insurance - To the extent Accuray is providing healthcare delivery services, Accuray shall provide medical malpractice coverage, for itself, its physicians, and its non-physician health care personnel in amounts of at least \$1,000,000 per occurrence and \$3,000,000 annual aggregate. If Accuray maintains a "claims made"

policy instead of an "occurrence" policy, it shall purchase prior to the termination of such insurance, "Tail" coverage to continue and extend coverage complying with this Agreement after the end of the term of the claims made policy.

17.5 Umbrella Liability Insurance - To include coverage in amounts of at least \$5,000,000.

18. Compliance with Laws. Accuray shall comply with all laws, ordinances, codes, rules, regulations, and licensing requirements that are applicable to the conduct of its business and the performance of Accuray's obligations under this Agreement, including those of federal, state, and local agencies having jurisdiction and/or authority.

Other applicable laws and regulations that Accuray must comply with include, but are not limited to:

18.1 Iran Divestment Act Certification: As required by NCGS §147-86.59, Accuray certifies that it is not listed on the Final Divestment List created by the N.C. State Treasurer pursuant to NCGS §147-86.58, and that it will not utilize on the contract any subcontractor that is identified on the list noted here: <https://www.netreasury.com/inside-the-department/OpenGovernment/Pages/Iran-Divestment-Act-Resources.aspx>

18.2 Federal and State Work Authorization Verification - Certification Required Pursuant to NCGS §143-48.5: To the extent required by NCGS §143-48.5, Accuray certifies that it and its subcontractors comply with the requirements of Article 2 of Chapter 64 of the N.C. General Statutes, verifying the work.

18.3 Medicare Record Access - In compliance with 42 U.S.C. 1395x (v) (1) (I) and implementing regulations, Accuray agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of Accuray necessary to verify the nature and extent of the costs of this Agreement. Accuray further agrees that if any of the duties of this Agreement are carried out by a subcontractor of Accuray, such subcontract will contain a clause to the effect that, until the expiration of four (4) years after the services are furnished under such subcontract, the Secretary of the Department of Health and Human Services and the Comptroller General will have access to such subcontract and to the books, documents and records of the subcontractor necessary to verify the nature and extent of the costs of such subcontract. This Section will survive the expiration or termination of this Agreement.

18.4 Access to Persons and Records The State Auditor and the using agency's internal auditors shall have access to persons and records as a result of all contracts or grants entered into by State agencies or political subdivisions in accordance with North Carolina General Statute 147-64.7 and Session Law 2010-194, Section 21 (i.e., the State Auditors and internal auditors may audit the records of Accuray during the term of the contract to verify accounts and data affecting fees or performance).

19. Patient Information.

19.1 Compliance with Applicable Patient Information Laws. In performing any services hereunder, Accuray may receive from Customer patient healthcare or billing information or other confidential patient information (collectively, "Patient Information"). Customer shall identify to Accuray in writing all such information when Customer provides such information to Accuray, and Accuray shall use Patient Information so identified by Customer only as necessary to provide the services to Customer as set forth herein. Accuray shall treat Patient Information consistently with all applicable laws and regulations and commensurate with the parties' mutually executed Business Associate Agreement.

19.2 De-Identified Information. Customer shall, wherever possible, provide Accuray with only de-identified Patient Information, in order to comply with the requirements of applicable laws and regulations. Any information provided to or shared with Accuray in connection with this Agreement shall, wherever possible, have all identifying Patient Information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on. Customer also acknowledges that de-identified Patient Information may be transferred to Accuray Incorporated, located in the United States, which complies with U.S. laws and regulations applicable to Patient Information.

20. Cancellations. Subject to termination pursuant to Section 2 (*Contingencies*) above, all payments made hereunder are non-refundable and no order accepted by Accuray may be canceled by Customer without Accuray's prior written consent. If Customer requests cancellation of any order and Accuray consents to such request, Customer agrees to pay Accuray a cancellation fee equal to the lesser of (a) the amount of previous payments made to Accuray pursuant to this Agreement or (b) the amount determined in accordance with the following cancellation schedule to cover the reasonable costs of order processing, handling, re-creating, shipping, storage, repackaging and similar activities incurred by Accuray in connection with such cancellation.

Timing of Cancellation Request prior to Scheduled Delivery	> 90 days prior to delivery	61-90 days prior to delivery	30-60 days prior to delivery
Fee as % of Total Purchase Price	2.5%	3.5%	5%

21. Treatment of Waste. Pursuant to laws and regulations relating to the composition of electrical and electronic equipment ("EEE") and the disposal of waste resulting from such equipment, the conditions for and financing of the disposal and treatment of commercial EEE waste is Customer's responsibility. Customer is in charge of collecting, treating and recovering EEE contained in the Accuray Deliverables provided under the Agreement. The foregoing obligations are passed by successive professional purchasers onto the EEE end-user. Failure by Customer to comply with the foregoing obligations may result in criminal sanctions.

22. Miscellaneous.

22.1 Assignment. Neither party may assign this Agreement without the other party's prior written consent, provided, however, (a) Accuray may assign



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this Agreement to any entity controlled by, controlling, or under common control with Accuray, or (b) upon written notice, either party may assign this Agreement to a successor or acquirer in connection with (i) a merger or acquisition, (ii) the sale of all or substantially all of such party's assets, or (iii) the sale of that portion of such party's business to which this Agreement relates; provided that any party to which Customer proposes assigning this Agreement must meet Accuray's standard creditworthiness requirements. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns. Any attempted assignment in violation of this Section 22.1 shall be null and void.

22.2 Dispute Resolution. Any dispute between Accuray and Customer arising from or related to this Agreement, excluding disputes regarding payment or Customer's unauthorized use or disclosure of Accuray Confidential Information or intellectual property, shall be settled as follows. The party initiating the dispute shall provide written notification to the other party, identifying in detail the nature of the dispute. The other party shall respond in writing to the notification within 30 calendar days from the date of receipt of the notification. The party initiating the dispute shall have an additional 30 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved within the foregoing 30-day period, the parties shall escalate the claim to the General Counsel, General Manager or Director of Accuray, or their designees, as applicable, and the President, Chief Executive Officer or Director of Customer. Each party shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim.

22.3 Conduct. Accuray prohibits the harassment of its employees and contractors in any form. Accuray considers harassment of, or discrimination against, its employees and affiliated persons a very serious matter and will investigate all complaints of inappropriate conduct. Where the investigation uncovers harassment or discrimination, Accuray will not hesitate to take prompt corrective action.

22.4 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, riot, war, fire, acts of God, accident, curtailment of or failure to obtain sufficient electrical or other energy, lack or diminished supply of raw materials or supplies due to the foregoing circumstances, or compliance with any law, regulation or order.

22.5 Governing Law. The rights and obligations of the parties under this Agreement shall be governed in all respects by the laws of the State of North Carolina.

22.6 Venue

22.6.1 If the Territory is within the United States or Canada, Customer irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the state and federal courts located in the State of North Carolina, USA ("Venue") for the resolution of any dispute between the parties concerning such products or services; (b) agrees not to commence any such proceedings except in such courts; and (c) waives any

objection to the laying of venue of any such proceedings in the state or federal courts located in the Venue.

22.6.2 If the Territory is outside the United States or Canada, Customer agrees that all disputes arising out of, or in connection with, this Agreement shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with said Rules of Arbitration. Any such arbitration shall take place in Geneva, Switzerland, and shall be conducted in the English language as spoken and interpreted in the United States of America. All written materials in connection with such arbitration shall be in the English language. The costs of any arbitration shall be borne equally by Customer and Accuray.

22.6.3 To the extent permitted under applicable law, no action, regardless of form, arising out of, or in any way connected with this Agreement may be brought by Customer more than three (3) years after the cause of action has occurred.

22.7 Waiver. The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

22.8 Severability. If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

22.9 Amendments. Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party.

22.10 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Accuray, in its sole discretion, may accept a purchase order that is signed by Customer, which together with Accuray's signature to this Agreement, may be considered counterpart signatures to this Agreement. Customer agrees and understands that such purchase order must not contain any terms that conflict with this Agreement.

22.11 Public Announcements. Accuray shall not use the award of this Agreement or its participation in this Agreement as part of any marketing, news release or commercial advertising in any form without the prior written consent of Customer (not to be unreasonably withheld or delayed). Notwithstanding the foregoing, Accuray may list Customer's name on Accuray's website as long as it is listed with other customers, as Accuray typically does with other customers, unless and until Accuray receives a written request from Customer asking Accuray to cease such activity. This Section shall survive any termination or expiration of this Agreement and will continue to bind the parties and their permitted successors and assigns.

22.12 Export Controls. Customer agrees that the Accuray Deliverables are not for export outside the Territory. Customer covenants not to export, supply or otherwise make any of the Accuray Deliverables available to any person or entity: (a) located in a U.S. or European embargoed country, (b) listed on any U.S. or European list of prohibited or restricted parties, or (c) in violation of any other laws applicable to Customer or Accuray or otherwise related to nuclear, chemical or

biological weapons or missiles.

22.13 English Language Requirement. Customer acknowledges and agrees that this Agreement is written in the English language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all respects, regardless of any translations of this Agreement which may be reviewed or executed by the parties.

22.14 Federal Healthcare Programs. With respect to the sale of an Accuray System in the United States, Accuray represents and warrants to Customer that, as of the date of this Agreement, and to the best of Accuray's knowledge, Accuray and Accuray's personnel providing services to Customer hereunder (collectively, the "Accuray Parties"): (a) are not currently excluded, debarred, or otherwise ineligible to participate in the federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (c) are not under investigation or otherwise aware of any circumstances which may result in the Accuray Parties being excluded from participation in the Federal Health Care Programs. Accuray shall notify Customer in writing within fifteen (15) days of receiving notice of any exclusion, suspension or disbarment from such programs during the term of this Agreement.

22.15 Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. In the event of a conflict or inconsistency between the terms stated in a purchase order or other similar document and this Agreement, the terms of this Agreement shall govern.

23. INDEPENDENT CONTRACTOR. Accuray shall be considered to be an independent Contractor and as such shall be wholly responsible for the work performed and for the supervision of its employees. Accuray represents that it has, or will secure at its own expense, all personnel and equipment required in performing the services under this Agreement. Such employees shall not be employees of, or have any individual contractual relationship with UNC Health Care System.

24. IMMUNIZATION: Each employee or subcontractor assigned to Customer's facility will have all immunization and health requirements met according to Customer's Infection Control and Screening Program, Occupational Health Service (summarized on Attachment 5). In addition, Accuray shall verify that each employee or subcontractor provided to Customer undergoes the same pre-employment/placement drug and health screening which is required of permanent staff of Customer. Attachment 5 includes health screening criteria and job categories of permanent staff for whom communicable disease screening is required.

25. BACKGROUND CHECKS AND DRUG TESTING Accuray will conduct a criminal background check, including certified court records, on each employee or subcontractor to be sent to UNC Hospitals facility which will show any convictions of each such employee or subcontractor, other than traffic offenses, which have occurred over the preceding seven (7) years. A copy of the results of such check shall be



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provided to UNC Health Care System prior to commencement of any Assignment. UNC Hospitals reserves the right to refuse the services of any employee or subcontractor based upon the results of such check.

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Initials: Customer _____
Accuray _____
Page A1

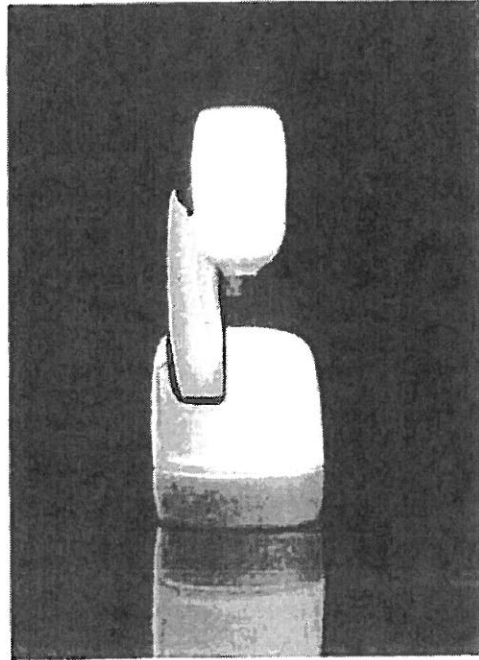
Attachment A

Accuray Base CyberKnife Configuration and Additional Options

A. CyberKnife® M6™ FJ+ System

\$6,650,000.00

- 1. **Robotic Treatment Delivery System**
 - 1.1. Image-Guidance System
 - 1.1.1. Diagnostic X-ray sources
 - 1.1.2. Two (2) In-floor amorphous silicon X-ray detectors
 - 1.2. 1000 MU/minute Linear Accelerator (LINAC)
 - 1.3. Robotic Manipulator
 - 1.4. Fixed Collimators
 - 1.4.1. Twelve (12) fixed collimators: 5mm – 60mm
 - 1.5. Standard Treatment Couch
 - 1.6. Treatment Delivery Control Console
 - 1.7. Iris™ Variable Aperture Collimator
 - 1.8. Xchange® Robotic Collimator Changer
- 2. **Standard Tracking Capabilities and Indication Packages**
 - 2.1. Fiducial Tracking System
 - 2.2. CNS Package
 - 2.2.1. 6D Skull Tracking
 - 2.2.2. Xsight® Spine Tracking System
 - 2.2.3. Brain AutoSegmentation™
 - 2.3. Prostate Package
 - 2.3.1. InTempo™ Adaptive Imaging System
 - 2.3.2. Male Pelvic AutoSegmentation
 - 2.4. Xsight® Spine Prone and Lung Package
 - 2.4.1. Xsight Spine Prone Tracking System
 - 2.4.2. Lung Optimized Treatment
 - 2.4.3. Xsight Lung Tracking System
 - 2.4.4. Synchrony® Respiratory Tracking System
 - 2.4.5. Monte Carlo Dose Calculation
 - 2.4.6. 4D Treatment Optimization and Planning System
- 3. **Treatment Planning System**
 - 3.1. Two (2) MultiPlan® Treatment Planning System Workstations
 - 3.2. Sequential Optimization
 - 3.3. MultiPlan QuickPlan™
 - 3.4. MultiPlan Quick Review
- 4. **Data Management Systems**
 - 4.1. CyberKnife Data Management System
 - 4.2. Radiosurgery DICOM Interface – ARIA or MOSAIQ®
 - 4.3. Clinical Efficiency Package
 - 4.3.1. Report Administration Application
 - 4.3.2. Storage Vault
 - 4.3.3. TxView™



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B. Additional Options Available for Purchase

The following Additional Options are available for purchase by Customers. Only those Additional Options set forth in Section A of the Agreement are actually included with Customer's Accuray System.

<i>Additional Option</i>	<i>Unit Price</i>
1. RoboCouch® Patient Positioning System (Flat Top) † <i>If the RoboCouch Patient Positioning System is selected, the Standard Treatment Couch will be removed from the Base CyberKnife System configuration and replaced with the RoboCouch Patient Positioning System.</i>	\$1,010,000.00
Standard Treatment Couch Credit	(\$350,000.00)
Net RoboCouch Patient Positioning System Price	\$660,000.00
2. Additional MultiPlan® Treatment Planning System Workstation Two (2) MultiPlan System workstations are included with the base CyberKnife System; however, additional MultiPlan System workstations may be purchased. Each MultiPlan System workstation includes the Monte Carlo Dose Calculation software.	\$170,000.00
3. InCise™ Multileaf Collimator	\$850,000.00
4. MultiPlan MD Suite	\$110,000.00
5. PlanTouch™ Plan Review <i>Compatible only with 3rd generation iPad and later versions and with iOS7. iPad hardware not provided. Customer must download PlanTouch software from Apple App store to enable software license. Wireless LAN access or VPN access required. To maintain required compatibility, the iPad iOS must only be updated to new versions available from Apple after specific notification has been provided by Accuray.</i>	\$115,000.00
6. Additional Training Points (Set of 10 Points) Additional Training Points may be purchased in sets of ten and are subject to the Accuray Terms and Conditions of Sale.	\$15,000.00

^a Radiosurgery DICOM Interface. Customer acknowledges that in order to take advantage of the interface functionality, Customer must separately purchase and install the corresponding version of the third party vendor software.

† PLEASE NOTE: If Customer intends to place the Accuray System into a vault that is smaller than the recommended minimum size (21'x15'10"x19'10"), then the RoboCouch Patient Positioning System is not an available Accuray System option.

[REMAINDER INTENTIONALLY LEFT BLANK]



Expense Addendum

Expenses

Only those expense items listed below may be reimbursed by UNCHCS. Any expense items in addition to those identified below must be approved by UNCHCS prior to being incurred.

The contractor and its employees will provide supporting documentation for all expenses for which reimbursement is sought from UNCHCS, except such items as tips, which will be reimbursed when reasonable and customary. Any expenses for which reimbursement is sought that are not accompanied by supporting documentation when initially submitted will not be reimbursed.

All invoices and supporting documentation are subject to audit by UNC Hospitals' Fiscal Services Division before payment will be made.

Transportation

UNCHCS will reimburse transportation expenses incurred by the contractor and each of its employees who is assigned to provide services to UNCHCS. Transportation expenses are those which are incurred during the contractor's travel from its primary place of business to and from UNCHCS or another location designated in writing by UNCHCS. Transportation expenses are those which are incurred during an employee's travel from his/her home to and from UNCHCS (or another location designated in writing by UNCHCS). For purposes of this document, home is defined as an employee's primary place of residence.

UNCHCS will not reimburse transportation expenses incurred by the family members of the contractor and its employees.

UNCHCS will reimburse the fare incurred by the contractor and its employees during transportation to and from UNC Hospitals and the UNC-CH School of Medicine (or another location designated in writing by UNCHCS) via taxi, van, or shuttle service.

UNCHCS will reimburse the parking fees at UNC Hospitals and the UNC-CH School of Medicine (or another location designated in writing by UNCHCS) and at airports incurred by the contractor and its employees during the engagement.

Any traffic fines incurred by contractor and its employees are the responsibility of the driver and will not be reimbursed by UNCHCS.

By air

The contractor and its employees will avail themselves of the lowest available round-trip coach airfare for travel to Raleigh Durham International Airport. The contractor and its employees will use best efforts to make travel arrangements so as to take advantage of a 21-day advance purchase or other discount promotional rate offered by an airline.

By car

The contractor and its employees will use best efforts to rent a car from the agency which offers the lowest available rate for a compact car (or larger if needed) or another discount promotional rate.

UNCHCS will reimburse mileage incurred in travel from contractor's primary place of business, or an employee's home, to and from UNC Hospitals and the UNC-CH School of Medicine (or another location when designated in writing by UNCHCS) when a personal car is used.



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Accuray System Sales Agreement
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Lodging

UNCHCS will reimburse lodging expenses at local motels and/or rental apartments, whichever is most economical, for the contractor and its employees during the engagement.

Motel

The contractor and its employees will book motel accommodations at motels at which UNC Hospitals and/or the UNC-CH School of Medicine receive a discounted rate, unless the contractor will receive a lower rate at those motels or another motel.

Apartment rental

A copy of the lease/rental agreement must be reviewed and approved by UNCHCS prior to the contractor's signature. UNC Hospitals and/or the UNC-CH School of Medicine will not guarantee, co-sign, be a party to, or have any obligations under the lease/rental agreement.

Per Diem

UNCHCS will reimburse at the rate of \$ 28 per person-day on the premises of UNC Hospitals and the UNC-CH School of Medicine. The per diem will cover all expenses incurred by the contractor and each of its employees, including meals, personal phone calls, and other incidentals.

Other

UNC Hospitals' and the UNC-CH School of Medicine's phones are not to be used by the contractor and its employees for personal calls or calls unrelated to the engagement. Contractor's use of company 800 number calling cards with no charge to UNC Hospitals' phone on which the call is made is acceptable.



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UNCH Immunization and Health Requirements for Contract Employees in Clinical Facilities

Contract employees in UNC Healthcare facilities will comply with the entire OHS policy. All contract employees with signs or symptoms of an infectious disease or exposure to communicable diseases should see their occupational health physician or local physician before providing services.

Tuberculosis

Annual training for all persons regarding the prevention of tuberculosis as mandated by the Occupation Safety and Health Administration (OSHA) (Federal Register 1994;59:54242-54303).

Initial and annual tuberculin skin test and evaluation as recommended by the Centers for Disease Control and Prevention (CDC) and mandated by OSHA. Tuberculin testing should be done by the Mantoux method using a 5-TU TST (record date placed, date read, signature of MD or RN who administered and interpreted the TST, and induration in mm).

Evaluation of all personnel exposed to tuberculosis as recommended by the CDC and mandated by OSHA.

Bloodborne Pathogens

Annual training for all persons with reasonably anticipated exposure to blood or body fluids regarding the prevention of bloodborne pathogens as mandated by OSHA (Federal Register) 1991;56:64175-64182) and UNC Health Care Exposure Control Plan for Bloodborne Pathogens.

Each person with reasonably anticipated exposure to blood or body fluids must be offered hepatitis B immunization as recommended by the CDC and mandated by OSHA. Persons refusing immunization must sign an informed refusal form as mandated by OSHA. Immunity should be assured for persons taking the vaccine by obtaining a quantitative anti-HBsAg titer 1-2 months after the 3rd dose of hepatitis B vaccine. Persons with an inadequate titer (i.e., <10 mIU/mL) should be offered 3 additional doses of hepatitis B vaccine and be retested for immunity using a quantitative test.

Evaluation (including provision of post-exposure prophylaxis within a few hours) of all personnel exposed to blood or contaminated body fluids as recommended by the CDC and mandated by OSHA.

Measles

All employees born after 1957 shall be immunized against measles unless immunization is contraindicated (severe febrile illness; pregnant females or women who may become pregnant within one month; immunocompromised as a result of immunodeficiency diseases, leukemia, lymphoma, generalized malignancy, therapy with corticosteroids, alkylating drugs, antimetabolites or irradiation; anaphylactic reaction to eggs; anaphylactic reaction to neomycin; reception within previous 3 months of immunoglobulin, whole blood or other antibody-containing products; other condition listed in manufacturer's package insert), or they can demonstrate immunity against rubeola. Immunity may be demonstrated by any of the following means:

Serologic evidence of immunity (written documentation required). For all personnel born >1957, serologies may be provided by the employee at his/her expense.

Immunization with 2 doses of measles vaccine (MMR preferred) on or after first birthday, doses at least 4 weeks apart.



Adults born before 1957 generally are considered immune to measles. During outbreaks, health care facilities should recommend that unvaccinated health care personnel born before 1957, who lack laboratory evidence of measles or laboratory confirmation of disease, receive 2 doses of MMR vaccine.

Mumps

All employees born after 1957 shall be immunized against mumps unless immunization is contraindicated (severe febrile illness; pregnant females or women who may become pregnant within one month; immunocompromised as a result of immunodeficiency diseases, leukemia, lymphoma, generalized malignancy, therapy with corticosteroids, alkylating drugs, antimetabolites or irradiation; anaphylactic reaction to eggs; anaphylactic reaction to neomycin; reception within previous 3 months of immunoglobulin, whole blood or other antibody-containing products; other condition listed in manufacturer's package insert), or they can demonstrate immunity against mumps. Immunity may be demonstrated by any of the following means:

Serologic evidence of immunity (written documentation required). For all personnel born >1957, serologies may be provided by the employee at his/her expense.

Immunization with 2 doses of mumps vaccine (MMR preferred) on or after first birthday.

Adults born before 1957 generally are considered immune to mumps. During outbreaks, health care facilities should recommend that unvaccinated health care personnel born before 1957, who lack laboratory evidence of mumps or laboratory confirmation of disease, receive 2 doses of MMR vaccine.

Rubella

All personnel must have demonstrated immunity against rubella (unless there is a medical contra-indication to immunization). Immunity may be demonstrated by any of the following means:

Serologic evidence of immunity (written documentation required). For all personnel born >1957, serologies may be provided by the employee at his/her expense. All personnel born >1957 are provided one dose of rubella vaccine unless contraindicated.

Immunization with 1 dose of rubella vaccine (MMR preferred) on or after first birthday.

For women of childbearing age, regardless of birth year, rubella immunity should be determined (unless there has been no menses for a period of 2 years or history of hysterectomy or bilateral oophorectomy) and women should be counseled regarding congenital rubella syndrome. Women who do not have evidence of immunity should receive MMR vaccine upon completion or termination of pregnancy.

Varicella

All personnel must have demonstrated immunity against varicella (unless there is a medical contra-indication to immunization). Immunity may be demonstrated by any of the following means:

History of varicella or zoster.

Serologic evidence of immunity (written documentation required).

Immunization with 2 doses of varicella vaccine on or after first birthday, doses at least 4 weeks apart.



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If negative or uncertain history, a titer will be drawn to establish immune status. Those with a negative titer are required to receive 2 doses of varicella vaccine unless medically contraindicated. Documentation of 2 doses of Varivax spaced at least 4 weeks apart is acceptable for immunity.

Annual influenza immunization is strongly encouraged and is expected to be mandatory as of July 2012.

Tetanus/diphtheria/pertussis (Tdap)

Tdap will be given to all personnel (as per the most recent Advisory Committee on Immunization Practices (ACIP) recommendations) unless medically contraindicated or the employee has documentation of Td or Tdap within the previous 2 years. Following a primary series, boosters should be administered every 10 years per ACIP (Advisory Committee on Immunization Practices). Post-exposure prophylaxis for tetanus with Td or Tdap should be provided per CDC/ACIP guidelines. Tdap will be provided to health care workers as per the most recent ACIP Guideline.



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Accuray Incorporated
1310 Chesapeake Terrace
Sunnyvale, CA 94089
USA

Customer Name: University of North Carolina Hospitals (hereinafter "Customer")	
Contact Name: Shiva Das	
Contract Number: 1032017BV1-UNC	
Original Quote Date: 3 September 2017	Revision Date:
Accuray Contact: Bob Vogt	Expiration Date: 17 May 2018

Bill-To: University of North Carolina Hospitals
NC Clinical Cancer Center
101 Manning Dr
Chapel Hill, NC 27514
USA

Site: University of North Carolina Hospitals
Address: NC Clinical Cancer Center
101 Manning Dr
Chapel Hill, NC 27514
USA

This Accuray Upgrade Quote ("Upgrade Quote") is provided by Accuray Incorporated ("Accuray"), and is only valid for the primary customer named above. This Upgrade Quote is non-transferable and not for export outside THE UNITED STATES ("Territory"). Capitalized terms used herein but not otherwise defined shall have the meanings given them in the attached Accuray Terms and Conditions of Sale.

Accuray Upgrade Options

A. Quote

All amounts are quoted in US Dollars .

Part Description	List Price	No of Diamond Plus Points (if applicable)	Quantity	Amount Total (if applicable)
QA Stereochecker Setup, Training and Travel	5,000.00		1.00	5,000.00
QA Stereochecker, Filmless CyberKnife QA System	70,000.00		1.00	70,000.00
Subtotal				75,000.00
Diamond Plus Points Redeemed (Only applicable for Customer redeeming Diamond Plus Points as detailed in Section D).				0.00
TOTAL AMOUNT DUE (excluding taxes)				75,000.00
TOTAL OF DIAMOND PLUS POINTS REDEEMED				0.00

Items included in the Upgrade Option(s) are as indicated in Section A above and Exhibit A attached hereto.

Regulatory Notice. The Accuray Deliverables in this Upgrade Quote may not have been licensed in accordance with the laws of the Territory. The Accuray Deliverables cannot be shipped until they are licensed or have necessary regulatory approvals for the Territory.

B. Pricing and Inclusions

1. Payment Terms.

Any Total Due amount reflected above in Section A (*Quote*), excluding any applicable taxes, is due as detailed below. *All amounts are quoted in US Dollars.*

75,000.00 net 30 days upon shipment

2. Shipping Terms

FOB Destination (Incoterms 2010).

3. Taxes. Customer is responsible for taxes as set forth in Section 2.3 (*Taxes*) of the attached Accuray Terms and Conditions of Sale. If Customer is tax exempt in the Territory, Customer is responsible for providing Accuray with sufficient evidence of Customer's tax exempt status as detailed in Section 2.3.2 (*Tax Exempt Status*) of the attached Accuray Terms and Conditions of Sale.**4. Site Preparation and Installation.**

4.1. Site preparation at Customer's expense.

4.2. Installation included at Accuray's expense. Please note that any Accuray System downtime associated with the installation of any of the Accuray Deliverables shall not count as downtime under any applicable Accuray Service Contract entered into between Accuray and Customer .

5. Warranty Period. The warranty period is for 12-months from the date of Acceptance (as defined in Section 6 (*Acceptance*) of the attached Accuray Terms and Conditions of Sale) but not to exceed 24 months from the date of delivery of the Accuray Deliverables in this Upgrade Quote ("*Warranty Period*"). Warranty includes all parts and labor as specified in Section 7 (*Warranty*) of the attached Accuray Terms and Conditions of Sale.**6. Training.** If applicable, Accuray will provide training for Customer personnel for the Accuray Deliverables in this Upgrade Quote, as outlined below. Hotel accommodations and travel costs are not included . The following costs are included: (a) reasonable local transportation to and from the hotel to the training center to attend Accuray training courses, and (b) meals or refreshments provided onsite during training courses.**C. Terms and Conditions for Upgrade Quote**

1. Terms and Conditions. All of the terms and conditions of the Accuray Terms and Conditions of Sale attached hereto are final and binding upon Accuray and Customer.**2.** Customer acknowledges and agrees that shipment of the Accuray Deliverables may take place a minimum of six (6) months following receipt of the signed Upgrade Quote.**3. Pre-Requisites.** Customer understands and acknowledges that proper operation of the Accuray Deliverables requires that the Accuray System meets certain minimum hardware and software requirements, as detailed in **Exhibit A** attached hereto. For clarification, it is Customer's sole responsibility to make the Accuray System ready for and compatible with installation and operation of the Accuray Deliverables.**4. Notices.** All notices required or permitted under this Upgrade Quote shall be in writing and: (i) if delivered in person, effective immediately, (ii) if delivered by reputable national or international overnight delivery service, effective 2 business days after deposit with carrier, or (iii) if delivered by registered or certified mail, postage prepaid with return receipt requested, effective 5 business days after deposit with carrier. All notices shall be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this section.

To Accuray:
Accuray Incorporated
Attention: General Counsel
1310 Chesapeake Terrace
Sunnyvale, CA 94089
USA

To Customer:
University of North Carolina
Hospitals
Attention: Shiva Das
101 Manning Dr
Chapel Hill, NC 27514
USA



Accuray Upgrade Quote

D. Diamond Upgrade Point Redemption –If Applicable in Section A (Quote)

1. If applicable, and in accordance with the terms of the Accuray Diamond Service Agreement executed between Customer and Accuray currently in effect for the Accuray System located at the site address indicated above, and as may be amended by the parties in writing as provided therein (“Diamond Agreement”), the Upgrade Option(s) are available at a significant savings off the list prices. Customer may receive the Upgrade Option(s) as Diamond Plus Points under the Diamond Agreement; however, Customer must sign and return this Upgrade Quote by the Expiration Date referenced above in order to qualify for this program. These Upgrade Option(s) will be credited against Customer’s Diamond Plus Points as indicated in the table below. By signing this Upgrade Quote and redeeming the Diamond Plus Points indicated below, Customer guarantees that payment for the relevant Agreement Year(s) will be paid according to the terms of the Diamond Agreement and any additional Diamond Choice Service Agreement(s) pursuant to which Plus Points are redeemed under this Upgrade Quote.

<i>Customer Name</i>	<i>Agreement Type</i>	<i>Serial Number</i>	<i>Site Address</i>	<i>Effective Date of Agreement</i>	<i>Agreement Year</i>	<i>No. of Diamond Plus Points Redeemed</i>
	Diamond Choice					
	Diamond Choice					
	Diamond Choice					
TOTAL						

2. Upgrade History:

Diamond Service Agreement			
<i>Year</i>	<i>Upgrade Options</i>	<i>No. of Diamond Plus Points Redeemed</i>	<i>Upgrade Quote Signature Date</i>
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			

[SIGNATURE PAGE FOLLOWS]



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Accuray Upgrade Quote

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IN WITNESS WHEREOF, the parties hereto have caused this Upgrade Quote to be executed by their officers, thereunto duly authorized. The parties acknowledge and agree that this Upgrade Quote does not become effective until it has been signed by all parties indicated below; however Customer shall be given the benefit of its signature date regardless of the date that Accuray signs.

ACCURAY INCORPORATED

CUSTOMER

By: _____

By: _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Please return this signed Upgrade Quote and attach any payments if necessary, prior to the Expiration Date set forth above to:

*Accuray Incorporated
ATTN: Sales Operations
1310 Chesapeake Terrace
Sunnyvale, CA 94089
USA
Main: +1.408.716.4600
Fax: +1.408.789.4205
Email: DomesticSalesContracts@accuray.com*

SIGNATURE PAGE TO ACCURAY UPGRADE QUOTE

Accuray Terms and Conditions of Sale

1. **Definitions.** "Accuray Products" means all products manufactured by Accuray, including, but not limited to, the Accuray System (as defined below) and any other Accuray-produced hardware, software, and firmware. "Accuray Services" means services of Accuray related to the warranty provided herein, but shall not include any services related to any Periodic Maintenance and Service Contract ("Service Contract") between Customer and Accuray (including but not limited to the Diamond Agreement), as applicable, which shall be governed by the terms of such separate agreement. "Accuray System" means the Customer's CyberKnife or TomoTherapy System, as applicable, to which the Accuray Deliverables in this Upgrade Quote will be applied. "Accuray Update" means a release of the software or a change to the existing hardware containing substantially only error corrections, minor new features, functionality and/or performance improvements, but that would not be required for the existing software and/or hardware configuration to perform to the existing functional Specifications. Such Accuray Update would not necessarily replace or extend the life of the existing software and/or hardware configuration of the Accuray Products. For example, an Accuray Update of software would be indicated where the version number is changed by incrementing the numeric digits to the right of the decimal point, e.g., versions 1.1, 1.2, 1.3, and 1.4 would each be Accuray Updates of the software. "Accuray Upgrade" means a new release of software or a change to the existing hardware, in each case, containing major new features, functionality and/or performance improvements that would enable the existing software and/or hardware configuration to perform to the level of the next version of the software and/or hardware configuration and are designed to replace the older software and/or hardware version of the same product and/or extend the useful life of that product, including the Upgrade Option(s) (as defined below). For example, an Accuray Upgrade to software would be indicated where the version number is changed by incrementing the numeric digits to the left of the decimal point, e.g., versions 1.0, 2.0, 3.0, and 4.0 would each be Accuray Upgrades to software. "Specifications" means the user manuals provided by Accuray to Customer in writing, as updated from time to time by Accuray. All Accuray Products, Accuray Services, Accuray Upgrades and Accuray Updates (collectively, "Accuray Deliverables") are furnished only on the terms and conditions stated herein. Any different or additional terms contained in Customer's purchase order or similar documents shall not bind Accuray. "Upgrade Option(s)" means the part(s) described in Section A above and sold to Customer hereunder.

2. Terms of Payment.**2.1 Purchase Price; Payment Schedule.**

2.1.1 Any Purchase Prices for the Accuray Deliverables are as set forth in Section A above. Purchase Prices are valid only for the item on which such prices are specified and only until the Expiration Date set forth above. Customer shall pay for the Accuray Deliverables in accordance with the payment schedule set forth in Section B.1 (*Payment Terms*) above.

2.2 **Invoices; Late Payments.** If Customer's internal payment processing procedure requires

Customer to receive an invoice before paying amounts due hereunder, Customer shall request such invoice sufficiently in advance to make the payment in accordance with the payment schedule set forth in Section B above. Past due balances shall bear interest at the rate of 1% per month or, if lower, the maximum amount permitted by applicable law. Accuray may suspend its performance under this Upgrade Quote and the Service Contract, as applicable, if payments are not made in accordance with the payment schedule set forth in Section B above. Accuray reserves the right to charge Customer the reasonable costs of collecting amounts due hereunder that are more than 30 days past due.

2.3 Taxes.

2.3.1 **Customer Responsibility.** Any payments from Customer to Accuray under this Upgrade Quote are exclusive of taxes (e.g. sales, use, VAT, rental or similar taxes), duties, license or other fees. If the use or possession of the Accuray Deliverables by Customer pursuant to this Upgrade Quote results in the imposition of any taxes, duties, or other fees, or requires the issuance of any permits or licenses, such taxes, duties or fees (other than taxes upon Accuray's net income) shall be at Customer's expense, and such permits and licenses shall be applied for and maintained by Customer. Any such taxes shall be due on the delivery date.

2.3.2 **Tax Exempt Status.** If applicable, Customer is responsible for providing Accuray with sufficient evidence of tax exempt status in the state where the Accuray Deliverables are to be installed prior to delivery of the Accuray Deliverables. If sufficient evidence is not provided, Accuray will invoice Customer as necessary for any otherwise applicable taxes and, if applicable, Customer shall reimburse Accuray for costs incurred to obtain tax refunds from relevant tax authorities resulting from Customer's failure to timely provide evidence of its tax exempt status.

2.4 **Method of Payment.** Unless otherwise specified in Section B.1 (*Payment Terms*) above, all payments by Customer shall be made by wire transfer or check. Credit card payments will not be accepted by Accuray unless Customer agrees to pay a convenience fee for the transaction.

2.5 **Customer's Creditworthiness.** Accuray's performance under this Upgrade Quote is subject to approval of Customer's credit by Accuray.

3. **Shipment.** Customer shall inspect arriving shipments and report any visible damage or shortages to Accuray within 48 hours after delivery and any concealed damage within 10 days after delivery. If Customer does not report damage in accordance with the previous sentence, Customer shall bear the risk of loss with respect to such damage. For shipments outside the United States, Customer shall procure all necessary permits and licenses for such shipments and for compliance with any government regulations applicable at the destination. The anticipated delivery date agreed upon by the parties is approximate. Accuray shall use reasonable efforts to meet such delivery date but shall not be liable for delays.

4. **Deferred Delivery or Installation.** If Customer is unable to accept delivery on the original scheduled

delivery date (or any rescheduled delivery date), or if installation (or commencement of installation) is delayed for reasons beyond Accuray's control, Accuray may place the Accuray Deliverables in storage (in Accuray's facility or in a warehouse) at Customer's expense (including, but not limited to, insurance and demurrage charges). Storage charges will be billed to Customer monthly, and Customer will pay all such invoices upon receipt.

5. **Site Preparation.** Customer is solely responsible for preparing its site for installation of the Accuray Deliverables according to the specifications supplied by Accuray. Customer shall provide Accuray with full, free, immediate, and unobstructed access to the installation site. Customer will be responsible, at its own expense, for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, remote access to the Accuray System enabled, access to the installation site, and all other requirements of applicable law completed on the estimated delivery date and ready for installation of the Accuray Deliverables. Accuray will have no responsibility for any matter affecting or related to the adequacy of architectural design, utility service design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers, and other safety devices must be approved by an expert in the radiation field and shall be Customer's responsibility. Customer shall make any necessary arrangements with trade unions or other third parties that may interfere (or threaten to interfere) with the installation of the Accuray Deliverables.

6. **Acceptance.** "Acceptance" of the Accuray Deliverables in this Upgrade Quote shall occur upon the earlier of (a) completion of the installation and execution of Accuray's Field Service Report form by Accuray or the entity installing the Accuray Deliverables in this Upgrade Quote, or (b) first patient treatment using such Accuray Deliverables. In no event shall Customer or its agents use the Accuray Deliverables (or any portion thereof) for any purpose before Acceptance thereof without the express written approval of Accuray. Customer shall indemnify and hold Accuray harmless from any such use.

7. Warranty.

7.1 **Warranty.** Accuray warrants that (a) the hardware components of the Accuray Deliverables will be free from defects in material and workmanship, and (b) the hardware and software components of the Accuray Deliverables will operate substantially in accordance with the Specifications, in each case for the Warranty Period set forth in Section B.5 (*Warranty*) above. Any service with respect to Accuray Deliverables provided by Accuray after the Warranty Period shall be provided in accordance with the terms of the Service Contract (as applicable).

7.2 **Warranty Remedy.** If Customer notifies Accuray during the Warranty Period of a defect in an Accuray Deliverable that causes such deliverable to fail to conform to the foregoing warranty, Accuray shall at its option either repair or replace the defective deliverable, or, if in Accuray's opinion such repair or replacement is not commercially reasonable, refund a

Accuray Upgrade Quote

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pro-rated portion of the price paid by the Customer for such Accuray Deliverable, which portion shall be calculated on a straight-line basis over a 5-year period beginning on the date of Acceptance. Warranty service will be performed during Accuray's normal business hours. In the event it is not possible to complete warranty service within normal business hours, or in the event Customer specifically requests that warranty service be performed outside of Accuray's normal business hours, Customer agrees to pay the standard Accuray service rates in effect for such services. This Section 7.2 sets forth Customer's only remedies with respect to a breach of the warranty specified in Section 7.1.

7.3 Conservation of Materials. In the interest of conservation of scarce materials and efficient utilization of high value parts, Accuray Deliverables may contain re-manufactured parts. Such parts are subject to the same standards of quality control applied to other parts and are covered by the warranty in this Section 7.

7.4 Scope of Warranty. The warranty services described in this Section 7 shall not apply to defects or non-conformities caused by: (a) abuse, accident, misuse or neglect of an Accuray Deliverable; (b) modification of an Accuray Deliverable (including any software therein) without Accuray's express written authorization; (c) use of an Accuray Deliverable in an operating environment other than the operating environment described in the Specifications; or (d) any component of an Accuray Deliverable that has been superseded by an update made available to Customer without charge by Accuray. In-warranty repair of replaced parts are warranted only for the unexpired portion of the original Warranty Period.

7.5 Transfer. If Customer transfers, relocates, sells or assigns any Accuray Deliverable, all Accuray warranty obligations will terminate unless Customer receives the prior written consent of Accuray for the transfer, relocation, sale or assignment. Upon any transfer or relocation, the Accuray Deliverable(s) must be inspected and certified by Accuray as being in compliance with all Specifications, and Customer will compensate Accuray for such inspection services at then prevailing service rates.

7.6 Other Warranties. EXCEPT AS SET FORTH IN THIS SECTION 7, ACCURAY DISCLAIMS ALL EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8. Damages. IN NO EVENT SHALL ACCURAY BE LIABLE FOR INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES ARISING FROM OR RELATED TO THIS UPGRADE QUOTE, WHETHER MATERIAL OR NOT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING WITHOUT LIMITATION, LOSS OF PROFITS, LOSS OF BUSINESS, LOSS OF DATA OR MORAL PREJUDICE. ACCURAY'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS UPGRADE QUOTE SHALL NOT EXCEED THE PAYMENT RECEIVED BY ACCURAY FOR THE ACCURAY DELIVERABLE RESULTING IN THE LOSS OR DAMAGE CLAIMED IN THE PRECEDING TWELVE (12) MONTHS PERIOD.

9. Intellectual Property Ownership and Software License. Accuray and its licensors retain all intellectual property rights in the Accuray Deliverables. All rights in intellectual property not expressly granted hereunder are reserved by the owner of such intellectual property. Accuray hereby grants Customer a nonexclusive, non-transferable, non-sublicensable, royalty-free right to use the software provided in connection with the Accuray Deliverables ("Software") only in machine readable form and only in combination with the Accuray Deliverable with which such Software is provided, commencing upon Acceptance and for so long as Customer owns the applicable Accuray Deliverable; provided that Accuray may terminate this license in the event of any default by Customer. Customer agrees to return the Software and any copies thereof to Accuray immediately upon expiration or termination of the license. The license granted to Customer does not include any right to use the Software for purposes other than for operation of the applicable Accuray Deliverable, nor does it include the right to copy, sell, assign, transfer, sublicense or prepare derivative works from the Software for any purpose without the prior written consent of Accuray. The Customer shall not copy, decompile or reverse engineer the Software in whole or in part, and Customer shall not disclose or provide the Software, or any portion thereof, to any third party. If Customer modifies the Software in any manner, all warranties associated with the Software and the applicable Accuray Deliverable shall become null and void.

10. Remote Software Solutions. In addition to the provisions of Section 9 (*Intellectual Property Ownership and Software License*) which apply to Software licensed from Accuray, the following additional provisions apply with respect to customers purchasing Accuray Remote Software Solutions software and products (the "Remote Products"):

10.1 For customers purchasing Remote Products, Accuray will enable a secure network connection (the "Telecommunications Link") between each Accuray System workstation (each a "Workstation") and the Accuray computer systems (the "Accuray Network"). Accuray and Customer will identify the specific persons authorized by Accuray to use the Accuray Network for remote access to Workstations and authorized peripheral devices based on the number of licenses purchased by Customer. Such authorized individuals may be employees, independent contractors, or persons otherwise affiliated with Customer (e.g., a physician with staff privileges or a referring physician) (each such authorized individual is a "Remote Access User"). Accuray will establish, configure and provide the authorizations necessary for each Remote Access User to use the Accuray Network to access designated Workstations and authorized peripheral devices, if applicable, at Customer's facility (such authorization, for each Remote Access User, is a "Remote Access License"), as well as provide instructions to the Customer to add or delete Remote Access Users on a going forward basis as necessary.

10.2 Any issues relating to the Workstation or Accuray System, including the Remote Products, will be addressed according to the limited warranty applicable to the Accuray System with which the Remote Products are purchased, or according to any Service Contract that is applicable to the Accuray System with which the Remote Products will be installed and utilized. It is expressly agreed between the

parties that (a) any defect or deficiency in any third party products not provided by Accuray shall not be subject to any warranties provided hereunder and shall be the responsibility of such third party provider, and (b) any failure of the Telecommunications Link or the Remote Products shall not constitute "downtime" under any applicable warranty or Service Contract between Customer and Accuray so long as Customer can still perform patient treatment plans on the local Workstations.

10.3 Customer must notify Accuray of any changes to the Telecommunications Link or Accuray equipment that may affect operation with the Accuray Network. An example would be TCP/IP address changes. Failure to inform Accuray may result in Customer being responsible for any reasonable charges incurred to resolve the problem. Customer will assume responsibility for any costs associated with relocation of a circuit or other required modifications to Customer's IT infrastructure.

10.4 Customer agrees to use the Remote Products only for the purposes and in the manner for which they are intended and in accordance with any applicable laws or regulations and recommendations of the manufacturer and/or supplier. If Customer uses the Remote Products to transfer or transmit any data that includes Confidential Information or Patient Information (as defined below), it is Customer's sole responsibility to ensure that such transmission is done only in accordance with any applicable laws or regulations regarding such transmission.

10.5 The provision of the Remote Products by Accuray to Customer do not require access to or transmission of any individually identifiable health information of patients subject to the Health Insurance Portability and Accountability Act of 1996, Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, and federal regulations and standards issued thereunder. To the extent possible, Customer shall not provide or make available to Accuray, its employees, subcontractors or agents any such information in relation to the Remote Products.

10.6 By signing this Upgrade Quote, Customer agrees to provide Accuray with remote access to the Accuray System through Accuray's CyberKnife Access Tool ("Diagnostic Tool") to allow Accuray to provide diagnostic services and to help maintain the Accuray System. This may require Customer to modify their telecommunications infrastructure to take advantage of this capability. Such remote access is necessary to allow Accuray to meet any uptime guarantee provided under the Service Contract (if applicable), and in the event that Customer does not allow connection to the Diagnostic Tool, or if the Diagnostic Tool is inaccessible due to failure of Customer's network, then any downtime occurring during a period of inaccessibility shall not count as downtime for purposes of any uptime guarantee as described in the Service Contract (if applicable).

11. Confidentiality. All drawings, designs, specifications, manuals, software and other non-public information furnished to the Customer by Accuray hereunder shall remain the confidential and proprietary property of Accuray ("Confidential Information"). All such information, except as may be found in the public domain, shall be held in confidence by Customer and

Accuray Upgrade Quote

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shall not be disclosed by Customer to any third parties or used by Customer other than in its operation of the Accuray Deliverables in accordance with the Specifications.

12. Patient Information.

12.1 Compliance with Applicable Laws. In performing any services hereunder, Accuray may receive from Customer patient healthcare or billing information or other confidential patient information (collectively, "Patient Information"). Customer shall identify to Accuray in writing all such information when Customer provides such information to Accuray, and Accuray shall use Patient Information so identified by Customer only as necessary to provide the services to Customer as set forth herein. Accuray shall treat Patient Information consistently with all applicable laws and regulations.

12.2 De-identified Information. Customer shall, wherever possible, provide Accuray with only de-identified Patient Information, in order to comply with the requirements of applicable laws and regulations. Any information provided to or shared with Accuray in connection with this Upgrade Quote shall, wherever possible, have all identifying Patient Information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on. Customer also acknowledges that de-identified Patient Information may be transferred to Accuray Incorporated, located in the United States, which complies with U.S. laws and regulations applicable to Patient Information.

13. Federal Health Care Programs. With respect to the sale of any Accuray Deliverables in the United States, Accuray represents and warrants to Customer that, as of the date of this Upgrade Quote, and to the best of Accuray's knowledge, Accuray and Accuray's personnel providing services to Customer hereunder (collectively, the "Accuray Parties"): (a) are not currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal Health Care Programs"); (b) have not been convicted of a criminal offense related to the provision of healthcare items or services; and (c) are not under investigation or otherwise aware of any circumstances which may result in the Accuray Parties being excluded from participation in the Federal Health Care Programs. Accuray shall notify Customer in writing within fifteen (15) days of receiving notice of any exclusion, suspension or disbarment from such programs during the term of this Upgrade Quote.

14. Treatment of Waste. Pursuant to laws and regulations relating to the composition of electrical and electronic equipment ("EEE") and the disposal of waste resulting from such equipment, the conditions for and financing of the disposal and treatment of commercial EEE waste is Customer's responsibility. Customer is in charge of collecting, treating and recovering EEE contained in the Accuray Deliverables provided under the Upgrade Quote. The foregoing obligations are passed by successive professional purchasers onto the EEE end-user. Failure by Customer to comply with the foregoing obligations may result in criminal sanctions. Any parts replaced under this Upgrade Quote become the property of Accuray and will be disposed of by Accuray field service engineers. Notwithstanding the foregoing, all parts that are considered by local

regulation to be "hazardous" or "contaminated" waste, or material that requires "special handling," will be disposed of or retained by Customer at Customer's facility.

15. Cancellations. All payments made hereunder are non-refundable and no order accepted by Accuray may be canceled by Customer without Accuray's prior written consent. If Customer requests cancellation of any order and Accuray consents to such request, Customer agrees to pay Accuray a charge determined by Accuray to cover the reasonable costs of order processing, handling, re-testing, shipping, storage, repackaging and similar activities incurred by Accuray in connection with such cancellation.

16. Miscellaneous.

16.1 Assignment. Neither party may assign this Upgrade Quote without the other party's prior written consent, provided, however, (a) Accuray may assign this Upgrade Quote to any entity controlled by, controlling, or under common control with Accuray, or (b) upon written notice, either party may assign this Upgrade Quote to a successor or acquirer in connection with (i) a merger or acquisition, (ii) the sale of all or substantially all of such party's assets, or (iii) the sale of that portion of such party's business to which this Upgrade Quote relates; provided that any party to which Customer proposes assigning this Upgrade Quote must meet Accuray's standard creditworthiness requirements. Subject to the foregoing, this Upgrade Quote will bind and inure to the benefit of the parties' permitted successors and assigns. Any attempted assignment in violation of this Section 16.1 shall be null and void.

16.2 Dispute Resolution. Any dispute between Accuray and Customer arising from or related to this Upgrade Quote, excluding disputes regarding payment or Customer's unauthorized use or disclosure of Accuray Confidential Information or intellectual property, shall be settled as follows. The party initiating the dispute shall provide written notification to the other party, identifying in detail the nature of the dispute. The other party shall respond in writing to the notification within 30 calendar days from the date of receipt of the notification. The party initiating the dispute shall have an additional 30 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved within the foregoing 30-day period, the parties shall escalate the claim to the General Counsel, General Manager or Director of Accuray, or their designees, as applicable, and the President or Chief Executive Officer of Customer. Each party shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim.

16.3 Arbitration. In the event of any dispute arising out of or in connection with this Upgrade Quote that is not resolved by the parties within 15 calendar days after escalation to the General Counsel or General Manager of Accuray, or their designees, as applicable, and President or Chief Executive Officer of Customer as described above, either party may submit the matter to binding arbitration under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with the said Rules of Arbitration. Any such arbitration shall be conducted in the city and country where Accuray is located and shall be conducted in the English language as spoken and interpreted in the United States of America. All

written materials in connection with such arbitration shall be in the English language. The costs of the arbitration shall be borne equally by Customer and Accuray. Judgment on the arbitrator's award may be entered in any court of competent jurisdiction.

16.4 Conduct. Accuray prohibits the harassment of our employees and contractors in any form. Accuray considers harassment of or discrimination against its employees and affiliated persons a very serious matter, and will investigate all complaints of inappropriate conduct. Where the investigation uncovers harassment or discrimination, Accuray will not hesitate to take prompt corrective action.

16.5 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Upgrade Quote (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, acts of God, accident, failure or breakdown of components necessary for order completion, curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies, or compliance with any law, regulation or order.

16.6 Governing Law. The rights and obligations of the parties under this Upgrade Quote shall be governed in all respects by the laws of the United States and the State of California without regard to conflicts of laws principles that would require the application of the laws of any other jurisdiction.

16.7 Venue.

16.7.1 If the Territory is within the United States or Canada, Customer irrevocably and unconditionally (a) consents to submit to the exclusive jurisdiction of the state and federal courts located in Sunnyvale, California, USA ("Venue") for the resolution of any dispute between the parties concerning such products or services; (b) agrees not to commence any such proceedings except in such courts; and (c) waives any objection to the laying of venue of any such proceedings in the state or federal courts located in the Venue.

16.7.2 If the Territory is outside the United States or Canada, Customer agrees that all disputes arising out of, or in connection with, this Upgrade Quote shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by a single arbitrator appointed in accordance with said Rules of Arbitration. Any such arbitration shall take place in Geneva, Switzerland and shall be conducted in the English language as spoken and interpreted in the United States of America. All written materials in connection with such arbitration shall be in the English language. The costs of any arbitration shall be borne equally by Customer and Accuray.

16.7.3 No action, regardless of form, arising out of or related to any Accuray Deliverable may be brought by Customer more than one (1) year after Customer has or should have become aware of the cause of action.

16.8 Waiver. The waiver of any breach or default of any provision of this Upgrade Quote will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

16.9 Severability. If any provision of this Upgrade Quote is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Upgrade Quote will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

Accuray Upgrade Quote

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16.10 Amendments. Any amendment or modification of this Upgrade Quote must be made in writing and signed by duly authorized representatives of each party. For Accuray, duly authorized representatives must include one (1) executive or SVP-level representative and one (1) legal representative.

16.11 Counterparts. This Upgrade Quote may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Accuray, in its sole discretion, may accept a purchase order that is signed by Customer, which together with Accuray's signature to this Upgrade Quote, may be considered counterpart signatures to this Upgrade Quote. Customer agrees and understands that such purchase order must not contain any terms that conflict with this Upgrade Quote.

16.12 Public Announcements. Customer acknowledges and agrees that Accuray may make public or media announcements regarding the sale of the Accuray Deliverables to Customer or the

installation of the Accuray Deliverables at Customer's location. Customer further acknowledges and agrees that, following installation of the Accuray Deliverables at Customer's location, Accuray may reference Customer on its internet site that identifies locations of such system centers.

16.13 Export Controls. Customer agrees that the Accuray Deliverables are not for export outside the Territory. Customer covenants not to export, supply or otherwise make any of the Accuray Deliverables available to any person or entity: (a) located in a U.S. or European embargoed country, (b) listed on any US or European list of prohibited or restricted parties, or (c) in violation of any other laws or indirectly related to nuclear, chemical or biological weapons or missiles.

16.14 English Language Requirement. Customer acknowledges and agrees that this Upgrade Quote is written in the English language as spoken and interpreted in the United States of America, and such language and interpretation shall be controlling in all

respects, regardless of any translations of this Upgrade Quote which may be reviewed or executed by the parties.

16.15 Entire Agreement. This Upgrade Quote contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. In the event of a conflict or inconsistency between the terms stated in a purchase order or other similar document and this Upgrade Quote, the terms of this Upgrade Quote shall govern.

16.16 Equal Opportunity. Accuray agrees to abide by the requirements of United States Federal regulation 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

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Precise, innovative tumor treatments™

Accuray Upgrade Quote
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Exhibit A

DETAILED UPGRADE OPTION INFORMATION

<i>UPGRADE OPTION</i>	<i>PRE-REQUISITE(S)</i>	<i>INCLUDED WITH UPGRADE OPTION</i>
QA Stereochecker Setup, Training and Travel		
QA Stereochecker, Filmless CyberKnife QA System	Must include 1060976-000	

CyberKnife® G4 Quotation

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ACCURAY

Corporate Office:

Accuray Incorporated
 310 Chesapeake Terrace
 Sunnyvale, CA 94089
 Phone: 408.716.4600
 Fax: 408.716.4620
www accuray.com

Quotation to: University of North Carolina Health Care System
 ("Customer")

Quotation Number: 030906TSh001UNC

Quotation Date: March 9, 2006

Attention: Jeff Yardley

Revision Number: 003

Revision Date: June 2, 2006

Please direct any questions to:
 Tom Shadrix @ 919.270.3757

Expiration Date: July 3, 2006

Only valid for primary customer quoted above. This quotation is non-transferable and not for export outside the U.S. Upon execution by both parties, this CyberKnife G4 Quotation shall become a binding CyberKnife G4 Purchase Agreement.

CyberKnife® G4 Robotic Radiosurgery System

The CyberKnife® 4th generation (G4) is the world's only intelligent robotic radiosurgery system. The CyberKnife system with its 4th generation (G4) capabilities uniquely combines continuous image-guidance technology with computer-controlled robotics to precisely deliver a sub-millimeter dose of radiation. The CyberKnife system utilizes a compact linear accelerator attached to a robotics-controlled treatment manipulator to target a precise number of pencil-thin beams of radiation at a tumor from many different directions. The patented image-guidance technology compares intra-operative x-rays with previously acquired CT images of the tumor and surrounding tissue to precisely target each beam of radiation. This approach results in a high dose of radiation concentrated within and conforming to the tumor, where the beams converge. With CyberKnife G4's sub-millimeter accuracy, surrounding normal tissue and critical structures receive a minimal, less-injurious radiation dose from which quicker recovery can occur.

A. The Base CyberKnife® G4 System**\$4,100,000.00****Robotic Treatment Delivery System****Image-Guidance Components**

- Target Locating Subsystem (TLS) - Employs two x-ray imaging systems providing a pair of orthogonal images at each treatment node. The images are digitized and compared to images synthesized from the patient's CT data. The TLS subsystem provides real-time precision information about the location of the treatment target, including compensation for small translational movements of the patient or the target during the treatment process.
- In-Floor Amorphous Silicon X-Ray Detectors - The imaging system uses two solid-state amorphous silicon sensor panels (40cm x 40 cm) built into the floor of the treatment room. Discrete photodiodes are arranged in a 1024 x 1024 pixel matrix. The resolution results in a pitch of 400 µm. Unlike traditional imaging detectors used prior to patient treatment only, the CyberKnife state-of-the-art detectors provide direct digital output throughout treatment.
- Target Locating System Control Console (TLSCC) and Computer - This unit controls the diagnostic X-ray sources and amorphous silicon imaging panels in acquiring images, as well as conducting image correlation to determine patient displacement during treatment.

Linear Accelerator Components

- 600 MU/min. Linear Accelerator (Linac) - The Linac consists of an electron gun and a series of microwave cavities under vacuum. The X-band Linac provides a collimated beam of 6 MV X-rays. The compact size allows unique manipulation by the intelligent robotic system that provides hundreds of different isocentric and non-isocentric beam directions allowing high conformality and avoidance of critical structures.
- X-Ray Head - The assembly contains the Linac, magnetron, microwave wave-guide components, the pulse transformer, water circulating connections, and a gas pressurizing connection for the wave-guide.
- Secondary Collimators - (in millimeters: 5, 7.5, 10, 12.5, 15, 20, 25, 30, 35, 40, 50, 60, pinhole and blank) Interchangeable collimators allow for greater flexibility and conformability during the treatment planning process.



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Accuray _____

CyberKnife® G4 Quotation

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- Modulator - This assembly contains the high voltage (HV) pulse-generating circuits that drive the Radio Frequency (RF) system located in the X-ray head.
- Chiller - The chiller cools the Linac and consists of a re-circulating pump, a water reservoir, and a refrigeration unit with chiller and temperature regulating control (used to maintain a stable operating temperature), water temperature indicator and status lamps. This is a closed loop system that does not require external facility connections.

Robotic Manipulator

- Unlike any other radiosurgery system in the world, Accuray's robotic system (manipulator) carries and aims the Linac providing automated positioning in six-degrees of freedom to within 0.12mm precision. It provides greater reach and flexibility than traditional gantry style linacs.

Axum® Treatment Couch & Automatic Patient Positioning System

- Automatic patient positioning system that is fully integrated with the Image-guidance system to enable accurate alignment of patients in one step.

Power Distribution Unit (PDU)

- The Power Distribution Unit is the AC power source for the entire CyberKnife® G4 system. It uses a 208VAC, 3 phase, 150 amp input.

Treatment Planning System

CyRIS™ MultiPlan™ Treatment Planning Computer

- The CyRIS MultiPlan planning system, one of the newest offerings from Accuray's CyRIS family of products, combines the latest innovations in dose optimization technology and automated treatment planning tools to enable clinicians to provide radiosurgery treatments of unprecedented accuracy and effectiveness. This planning system combines forward and inverse, isocentric and non-isocentric and conformal and non-conformal planning methods, advanced image fusion capabilities for CT, MR, PET and 3D Angiography images, 2D and 3D auto segmentation and contouring tools and a powerful 3D graphical evaluation options into an easy-to-use, Windows®-based work station. With its unique real-time optimization feedback process, MultiPlan allows clinicians to make adjustments during plan optimization, an advancement that significantly accelerates the creation of treatment plans.

CK Remote™ Open Architecture

- Import DICOM RT image sets (CT, MR and PET) and Regions of Interest ("ROI")

Clinical Application Modules

Synchrony™ Respiratory Tracking System

- The CyberKnife System with the Synchrony Respiratory Tracking System is the only radiosurgery system in the world that identifies tumor position throughout the treatment and synchronizes treatment delivery to the motion of the tumor throughout the respiratory cycle. The Synchrony System permits patients to breathe normally during their treatment, without breath-holding or gating techniques. The System will allow physicians, for the first time, to treat their patients with much tighter margins, no longer having to add significant margins to compensate for a moving target, thus sparing more healthy tissue.

Xsight™ Spine Tracking System

- Xsight™ Spine Tracking System from Accuray eliminates the need for surgical implantation of uncomfortable radiographic markers, or fiducials, in the delivery of radiosurgery treatments along the spinal column. Xsight relies on the bony anatomy of the spine to automatically locate and track tumors along the spinal column.

B. CyRIS™ Family of Products

Additional CyRIS™ MultiPlan™ Treatment Planning Systems

The newest offering from Accuray's CyRIS family of products, the CyRIS MultiPlan System combines the latest innovations in dose optimization technology and automated treatment planning tools to enable clinicians to provide radiosurgery treatments of unprecedented accuracy and effectiveness. One (1) MultiPlan System is included with the Base CyberKnife G4 System, however, additional MultiPlan Systems may be purchased. Select additional MultiPlan Systems by initialing the box below.



CyRIS MultiPlan System (Receive a discount on two or more additional Systems)

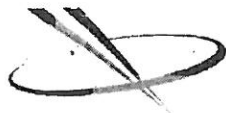
\$125,000.00 each

Number of Additional MultiPlan Systems desired: 1

MultiPlan Subtotal

\$125,000.00

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CyberKnife® G4 Quotation

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CyRIS™ InView™ Workstation

A remote image fusion and contouring station designed to streamline the pre-planning step of image preparation and tumor volume definition by enabling the user to complete this critical step within minutes from the hospital or remotely. Select by initialing the box below.



CyRIS InView Workstation (Receive a discount on two or more additional Systems)

\$45,000.00 each

Number of Workstations desired: 1

InView Subtotal

\$45,000.00

CyRIS MultiPlan Promotion

Receive one (1) free CyRIS MultiPlan System (in addition to the one (1) CyRIS MultiPlan System that is included as part of the Base CyberKnife G4 Configuration) if this Purchase Quotation is signed and received by Accuray on or before July 3, 2006.

(\$125,000.00)

CyRIS Products Subtotal

\$45,000.00

Multiple CyRIS Discount

If Customer purchases more than one additional CyRIS product, Customer will receive a Multiple CyRIS Discount. This Promotion does not include the one (1) CyRIS MultiPlan System that is included as part of the Base CyberKnife G4 Configuration or the CyRIS MultiPlan that is part of the Promotion.

CyRIS Products Total

\$45,000.00

C. Additional Options

Data Management Systems

Patient Archive and Restore System

The Patient Archive and Restore System includes a PC workstation that is networked to the CyberKnife system patient database. It allows archiving of patient records either on-line to the PC's hard drive or off-line to DVD media, as well as later restoring of patient records back into the CyberKnife system patient database for possible follow up treatment. Both of these processes occur as background processes freeing up the Treatment Delivery and Treatment Planning Systems from performing these tasks, enhancing the overall clinical workflow



Patient Archive and Restore System ("PARS")

\$35,000.00 each

Number of PARS Systems desired: 1

PARS Subtotal

\$35,000.00

Additional Options Total

\$35,000.00

D. Pricing & Inclusions

CyberKnife® G4 Robotic Radiosurgery System (from Section A above)

\$4,100,000.00

CyRIS Products Total (from Section B above)

\$45,000.00

Additional Options Total (from Section C above)

\$35,000.00

Discount (providing this quotation is signed by July 3, 2006)

(\$450,000.00)

July 3, 2006 Promotion (providing this quotation is signed by July 3, 2006)

(\$80,000.00)

Provided this Agreement is signed and received by Accuray on or before July 3, 2006, Customer shall receive an additional \$80,000 discount. However, should Customer, at any time prior to installation, decide not to purchase the CyRIS InView Workstation or the PARS System, the additional \$80,000 discount will be cancelled.

Total System Price (with CyRIS Products)

\$3,650,000.00



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Accuray _____

CyberKnife® G4 Quotation

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Payment Terms:

- \$50,000 with Signed Letter of Intent
- 30% of Price less \$50,000 LOI payment due with Signed Agreement (to be signed by July 3, 2006)
- 40% of Price due upon delivery of the CyberKnife G4 System (May 31, 2007)
- 30% of Price due upon Completion of Acceptance Testing

Board Contingency:

This Agreement must be signed by July 3, 2006 and is contingent upon Board Approval, to be granted by no later than June 30, 2006. Upon Board approval, Customer is to provide confirmation in writing to Accuray within 5 business days, as per paragraph #25 below, with payment due as specified above. This Agreement shall remain contingent through June 30, 2006, after which time, if Accuray does not receive written confirmation of Board approval, this contingency shall be deemed waived and this Agreement and all of its terms and conditions shall become binding on all parties. Should this Agreement terminate under this paragraph, upon timely notice from Customer of failure to satisfy this contingency, Accuray shall refund any money paid by Customer to Accuray within 30 days.

CON Contingency:

Purchase Quotation must be signed by July 3, 2006 and is contingent upon Certificate of Need (CON) approval by December 15, 2006. Upon CON approval, Customer is to provide confirmation in writing to Accuray within 5 business days, as per Paragraph #25 below, with payment due as specified above, if any. If confirmation of CON approval is not received by Accuray in writing within the 5 business days, this Purchase Quotation and all of its terms and conditions becomes null and void and thereby automatically terminates. Should this Purchase Quotation terminate under this paragraph, Accuray shall refund any money paid by Customer to Accuray within 30 days.

Departmental Chair Contingency:

This Agreement must be signed by July 3, 2006 and is contingent upon approval of the newly appointed Chair of the Department of Radiation Oncology at the University of North Carolina School of Medicine, to be granted by no later than June 30, 2006. Upon the approval of the new Chairperson, Customer is to provide confirmation in writing to Accuray within 5 business days, as per paragraph #25 below, with payment due as specified above. This Agreement shall remain contingent through June 30, 2006, after which time, if Accuray does not receive written confirmation of Chairperson's approval, this contingency shall be deemed waived and this Agreement and all of its terms and conditions shall become binding on all parties. Should this Agreement terminate under this paragraph, upon timely notice from Customer of failure to satisfy this contingency, Accuray shall refund any money paid by Customer to Accuray within 30 days.

Shipping Terms:

- F.O.B. Destination.
- Shipping to be paid by Accuray.
- Anticipated delivery scheduled for May 31, 2007

Site Preparation and Installation:

- Site preparation at Customer's expense.
- Installation Included at Accuray's expense.

Warranty:

- One (1) year warranty includes all parts and labor.

Training:

- Training provided for up to five (5) personnel (e.g. surgeon, radiation oncologist, physicist, radiation therapist). Hotel accommodations and airfare are not included.
- Additional attendees will be charged according to the then current training price list.

E. Preventive Maintenance and Service Contracts

Accuray offers the following Preventive Maintenance and Service contracts. Such service contracts cover the Base CyberKnife G4 System as set forth in Section A, up to two (2) CyRIS MultiPlan Systems (including the CyRIS MultiPlan System in the Base CyberKnife G4 System), and up to three (3) CyRIS InView Workstations. If Customer has more than two (2) CyRIS MultiPlan Systems installed (including the CyRIS MultiPlan System in the Base CyberKnife G4 System) or more than three (3) CyRIS InView Workstations installed, then an additional charge of \$18,750.00 per year per MultiPlan and \$6,750.00 per year per InView, as applicable, will be added by Accuray to the invoice for Customer's Preventive Maintenance and Service contract and Customer shall pay such amounts to Accuray. Select one of the following Preventive Maintenance and Service contract options by initialing the box next to the service option desired. All the terms and conditions of Accuray's Preventive Maintenance and Service contracts, to be signed separately and invoiced separately by Accuray, apply. Customer understands and acknowledges that should it choose to delay selecting a Preventive Maintenance and Service contract, it will not be entitled to any upgrades released under Accuray's Diamond Elite Preventive Maintenance and Service contract between the date of this Purchase Agreement and the date a Diamond Elite Service contract, if Diamond Elite service is ultimately selected, is signed.



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EMERALD ELITE SERVICE: Four (4) year contract, no payments until after warranty year

First Year (Warranty Year)	No Payment
Second Year	\$275,000.00 per year
Third Year	\$275,000.00 per year
Fourth Year	\$275,000.00 per year
Fifth Year (optional)	\$275,000.00 per year

DIAMOND ELITE SERVICE: Four (4) year contract, no payments until after warranty year

First Year (Warranty Year)	No Payment
Second Year	\$460,000.00 per year
Third Year	\$460,000.00 per year
Fourth Year	\$460,000.00 per year
Fifth Year (optional)	\$460,000.00 per year

Payment Terms: See Service Agreements

F. Accuray Terms and Conditions

1. Terms and Conditions

Accuray Products shall mean all products manufactured by Accuray Incorporated ("Accuray") including Accuray-produced hardware, software, and firmware. Accuray Services shall mean services of Accuray related to the warranty provided herein, but shall not include any services relating to a Preventive Maintenance and Service Contract between Customer and Accuray, which shall be governed by the terms of such separate Preventive Maintenance and Service Contract. Accuray Systems shall mean complete radiosurgery systems which include component parts produced by other manufacturers. Accuray Update shall mean any update offered by Accuray to any Accuray Product or Accuray System. Accuray Upgrade shall mean any upgrade offered by Accuray to any Accuray Product or Accuray System. All Accuray Products, Accuray Services and Accuray Systems are furnished only on the terms and conditions stated herein and on the face of the applicable Accuray quotation, notwithstanding any terms or conditions on Customer's order. Formation of any contract between Accuray and Customer is expressly made conditional on Customer's agreement to Accuray's Terms and Conditions of Sale, unless otherwise agreed to in writing by Accuray. Any different or additional terms contained in customer's purchase order are to be construed as proposals for addition to the Agreement. Accuray may either accept or reject such proposals, however no proposal shall be deemed accepted by Accuray unless done so expressly in a writing signed by Accuray.

2. Quotations and Prices

Accuray's prices, quotations and contracts are subject to the following unless otherwise stated in writing:

- a) This CyberKnife G4 Quotation is firm and expires on the date set forth at the top of the first page of this Agreement.
- b) Accuray's performance is conditioned upon and subject to Accuray's approval of Customer's credit. Customer agrees to provide all information reasonably requested by Accuray to carry out credit approval.
- c) All prices quoted are for Accuray Systems, Accuray Products and Accuray Services only and are exclusive of transportation, special packing necessary for export, insurance, taxes (including, without limitation, any sales tax, use tax or similar tax), license fees, customs fees, duties and other related charges.
- d) Clerical and typographical errors are subject to correction.
- e) Published weights and dimensions are approximate only.
- f) Delivery dates quoted are subject to receipt of prior orders. Prices are valid only for the payment schedule specified.

3. Terms of Payments

Absent any express language to the contrary in Accuray's quotation, all payments are non-refundable and all of the following terms apply. The price of each Accuray System, Accuray Service or Accuray Product is based upon the payment schedule set forth in Accuray's quotation. Any alternative payment schedule and resulting price change must be approved in writing by Accuray and Customer. Terms are net due in accordance with the Payment Terms set forth in Section C above, but in any event not later than the date of Customer's receipt of Accuray's invoice. Past due balances shall be subject to interest of 1.5% per month or, if lower, the maximum amount permitted by applicable law. If payments are not made by their respective due dates set forth in the Payment Terms of Section C above, then Accuray, at its sole option, may terminate this agreement.

Partial shipments will be billed as made and payments therefore are subject to the above terms. Accuray may cancel or delay delivery of Accuray Systems, Accuray Services or Accuray Products in the event of an arrearage in Customer's account with Accuray. Customer shall reasonably cooperate with Accuray to execute such documents and accomplish such filings and/or recordings thereof as Accuray may deem necessary for the protection of its interests in the Accuray Systems and Accuray Products furnished to Customer.

If installation or acceptance is delayed by Customer, payment due upon acceptance of the Product shall be due and payable (1) sixty calendar days after delivery, or (2) in full on acceptance, whichever occurs first.



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4. Transportation and Risk of Loss

Unless otherwise expressly agreed to by Accura in writing, all sales and shipments are FOB Destination with all transportation and insurance at the expense of the Accura. Transportation to Customer's site in the 48 contiguous United States will be in "air ride" vans unless some other means of transportation is agreed upon and approved in writing by Accura. Unless specifically requested otherwise in writing, Accura may insure to full value of the Accura Systems or Accura Products shipped or declare full value to the transportation company at the time of shipment. Any shipments outside of the 48 contiguous United States will be by boat and will be in containers subject to the special packing provisions of Paragraph 2. Title shall pass to Customer once Accura has received all payments owed hereunder for the System from Customer.

5. Specifications

Accura Systems and Accura Products supplied and installed by Accura will be in accordance with the written Specifications (User Manuals, Reference Guides and the Base CyberKnife G4 Configuration listed in Section A. above), as provided by Accura to Customer. Minor deviations from such Specifications shall not be made the basis of any claim against Accura. Accura shall not be responsible for performance figures given in any source, including advertisements and catalogues, other than the Specifications provided in writing by Accura. Specifications are subject to change without notice, provided that the revised Specifications include comparable functionality for the Accura System or Accura Product.

6. Performance

Dates specified for delivery and installation are best current estimates only and failure to perform on or by such dates shall not subject Accura to liability. Accura shall not be liable in any way because of any delay in delivery or installation hereunder which is due to acceptance of prior orders, technical difficulties, unforeseen circumstances, or to causes beyond its control, including, without limitation, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor, supplier or customer caused delays; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid, effecting its performance hereunder.

Accura's obligation to deliver and install any Accura Products or Accura Systems, as well as any other related obligations, shall be deemed suspended during and extended for such time as it is so delayed, and thereafter the other party shall accept delivery and installation hereunder.

7. Storage

If, because of delays in completion of Customer facilities, or for any cause other than a cause described in Paragraph 28 (Force Majeure) below, Customer delays or fails to provide written authorization to deliver the Accura Systems or Accura Products to Customer on the delivery date scheduled by Accura, Customer hereby authorizes Accura to deliver the Accura Systems or Accura Products to storage provided by customer upon completion of manufacture. Customer shall be responsible for all storage related charges, including insurance and any demurrage charges. Any payment increments due upon delivery including any applicable taxes due shall be paid by Customer. Risk of loss and/or damage shall pass from Accura to Customer on delivery of Accura Systems or Accura Products to Customer's storage facility. Title shall pass to Customer once Accura has received all payments owed hereunder for the System from Customer.

8. Architecture

Accura will have no responsibility for any matter affecting or related to the adequacy of architectural design, the radiation protection walls and barriers, patient viewing devices, or facility personnel safety devices at Customer's site. Architectural design, radiation protection walls and barriers and other safety devices must be approved by an expert in the radiation field and shall be the Customer's responsibility. Customer shall be responsible for utility service design and location, and other details of its facility.

9. Installation

Accura will notify Customer approximately ninety (90) calendar days prior to the scheduled delivery of the Accura System to coordinate installation details. Installation will be performed by Accura. Accura will assemble and test the Accura System. Operation of the Accura System by Accura, as necessary for completion of installation or acceptance tests, is subject to Customer providing assurances of adequate radiation shielding protection and other site preparations required for the safety and protection of personnel and Accura Systems and Products. Upon completion of the installation, Accura's representatives will demonstrate proper machine operation by performing Accura's Acceptance Test Procedure. As set forth in Paragraph 11 (Calibration and Radiation Surveys), below, Accura is not responsible for any commissioning of the System, including any calibration or radiation surveys. Such commissioning shall be the sole responsibility of Customer.

Customer will be responsible for having the building, utilities, lighting, ventilation, air conditioning, mounting facilities, all necessary radiation shielding, patient positioning lasers, closed-caption TV system, intercom, and access to the room completed on the estimated delivery date and ready for installation of the Accura System. Subject to the provisions of Paragraph 28 (Force Majeure) below, if delays in completion delay installation, Customer will reimburse Accura at Accura's standard service rates for any extra time and/or travel by Accura made necessary by the delay.

Customer will provide labor and rigging services necessary to unload the sub-base frame and the rest of the Accura System from the transport vehicle and move the entire Accura System to its final position. Customer will also be responsible for the setting and grouting of the sub-base frame and the connection of the Accura System to the utilities. An Accura representative will monitor the movement, final positioning and connection of the Accura System.

Customer shall provide a representative who shall be present at all times during the installation and be capable of assisting where necessary. When no representative is present and assistance from Customer is not available when required by Accura, the installation shall be discontinued and the Customer charged for any additional costs incurred.

Accura will, if requested and as a convenience to the Customer, assist the Customer in locating a rigger and/or local licensed contractor. In cases where Accura supervises such work, Accura shall act solely as Customer's agent and shall have no responsibility or liability of any kind therefore.



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Should completion of installation be delayed due to union action or influence, Customer shall, as soon as possible, make such arrangements as may be necessary for the work to be carried out at the Customer's expense by the Customer, under the engineering supervision of Accuray.

10. Training

Accuray will provide training for up to five (5) personnel. Such personnel may include, for example, Surgeons, Radiation Oncologists, Physicists, and Radiation Therapists. Technical training will occur at Accuray's Training Facility in Sunnyvale, California or such other regional training facility as Accuray may establish. Customer shall be responsible for the travel and living expenses of all personnel sent for training. Additional attendees will be charged according to the current training price list.

Technical Training of a Core Group of up to five (5) people will occur prior to installation, any remaining personnel will be provided Technical Training within three (3) months of installation. The core team shall include at least one (1) Surgeon, one (1) Radiation Oncologist, one (1) Medical Physicist and one (1) Radiation Therapist.

Accuray will arrange for one (1) Clinical Site Visit for the five (5) person Core Group prior to installation. This Clinical Site Visit will involve clinical interaction with personnel at an operating CyberKnife center and an opportunity to witness actual patient treatment. Completion of Technical Training is a prerequisite to participation in the Clinical Site Visit.

Accuray will provide a trainer and physician advisor on the use of the CyberKnife G4 System at the Customer site during first patient treatment. However, proctoring and credentialing of physicians and medical staff is the responsibility of the Customer and should be performed separately from Accuray training according to the policies and procedures of the particular Customer or affiliated hospital as applicable. Customer acknowledges and agrees that completion of the Technical Training and Clinical Site Visit by the Core Group are prerequisites for Accuray providing a trainer and a physician advisor during the first patient treatment. As such, Accuray shall have the right to reschedule the first patient treatment in the event that Customer's Core Group has not completed the Technical Training and the Clinical Site Visit in a timely manner prior to the first patient treatment.

11. Calibration and Radiation Surveys

Customer shall be solely responsible for all Accuray System commissioning and calibration. The dose rate and integrated dose measured by the accelerator transmission ionization chamber and dosimetry electronics must be calibrated by a qualified radiological physicist prior to use of the Accuray System for patient treatment. Customer shall be responsible for quality assurance testing and calibrating the Accuray System on a regular and on-going basis. Customer also shall be responsible for radiation surveys which may be required by applicable law or regulation or which may be necessary to establish that radiation does not exceed safe levels. Accuray will have no responsibility for any such commissioning, quality assurance testing, calibration or radiation surveys. Customer acknowledges and agrees that proper commissioning, calibration and QA of the Accuray System are necessary prerequisites to the first patient treatment and that Accuray has the right to delay the first patient treatment in the event that Customer, in Accuray's sole opinion, does not have sufficient time between installation and first patient treatment to properly commission, calibrate and QA the Accuray System prior to first patient treatment.

12. Local Requirements

Customer shall be responsible for obtaining all permits and for meeting all requirements of any kind whatsoever relating to state and local codes, registration, regulations and ordinances. Accuray makes no warranty of any kind regarding compliance by the Accuray Systems, Accuray Products or Accuray Services with such requirements.

13. Acceptance

Each Accuray System shall be deemed accepted by Customer upon completion by Accuray of its applicable acceptance tests or execution of Accuray's acceptance form by Customer. Notwithstanding the foregoing, any use of the Accuray System or Accuray Products by Customer, its agents, employees or licensees, for any purpose after delivery and before acceptance thereof, without the express written approval of Accuray, shall constitute acceptance of the Accuray System by Customer. Prior to acceptance, Accuray may repair or, at its option, replace defective or non-conforming parts after receipt of notice of defect or nonconformity. After acceptance, Customer's remedies shall be as provided in the Warranty paragraph herein.

14. Patents and Other Intellectual Property Rights

Accuray will at its own expense and as set forth herein, defend any action brought against Customer in respect to any claim that the design or manufacture of any Accuray System, Accuray Product, Accuray Update or Accuray Upgrade, constitutes an infringement of any patents or other intellectual property rights of the United States.

Subject to the provisions in the DAMAGES and LIMITATION OF LIABILITY paragraphs hereof, Accuray will pay all damages and costs either awarded in a suit or paid, in Accuray's sole discretion, by way of settlement, including reasonable attorneys' fees, which are based on such claim of infringement. To the extent such damages are incurred as a result of Customer's compliance with Accuray's recommendation to continue the allegedly infringing use, such damages shall not be limited by Paragraph 18 (Damages). If Customer continues to use the System against Accuray's recommendation, however, then Accuray shall not be responsible for any damages incurred as a result of such continued use. Customer shall promptly notify Accuray in writing of such claim of infringement and give Accuray full authority, information and assistance in settling or defending such claim, and any failure to do so shall excuse Accuray of its obligations under this Paragraph 14. Once Accuray assumes the defense of any claims, Accuray shall have full control of the defense of any claims and sole authority to settle any claims, however, Customer shall have the right to retain its own attorneys at its own expense. If Customer's rights to the System are limited as a result of any such claim, Accuray will, in its sole discretion and at its own expense, either (i) procure a license which will protect Customer against such claim without cost to Customer, (ii) replace said Accuray System or Accuray Product with a non-infringing Accuray System or Accuray Product, or (iii) remove said Accuray System or Accuray Product and refund an equitable portion of the price paid by the Customer to Accuray for said Accuray System or Accuray Product. Accuray shall have no liability whatsoever hereunder with respect to any claims settled by Customer without Accuray's prior written consent.

Accuray EXPRESSLY EXCLUDES from any liability hereunder and Customer shall hold Accuray harmless from and against any expense, loss, costs, damages or liability resulting from claimed infringement of patents, trademarks, copyrights or any other intellectual property rights: (1) arising from a use of said Accuray System or Accuray Product not in accordance with the Specifications, (2) based on items used or combined with the Accuray System or Accuray Product, such as other equipment,

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processes, programming applications or materials not furnished by Accuray, and/or (3) arising out of compliance by Accuray with Customer's designs, specifications or instructions. The foregoing states Accuray's entire liability for any claim based upon or related to any alleged infringement of any patent or other intellectual property rights.

15. Warranty

Accuray warrants that Accuray Products (as defined in Paragraph 1) will be free from defects in material and workmanship and will operate in accordance with the published Specifications for a period of one year from the date of acceptance, but not to exceed twenty-four months from date of delivery, provided however, for the above period Accuray warrants software media and firmware media furnished by Accuray in or for use with Accuray Products or Accuray Systems (1) to be free of defects in materials which cause failure to execute programming instructions and (2) to be free of errors which cause failure to perform substantially in accordance with the operational features of Accuray's published Specifications for the Accuray System or Accuray Product at the time of sale, but Accuray makes no warranty that the operation of any software or firmware will be uninterrupted or error free.

Repair, or at Accuray's option, replacement of defective parts shall be the sole and exclusive remedy under warranty. If in Accuray's opinion such repair or replacement is not feasible, or if such remedy fails of its essential purpose, Accuray may elect to negotiate with the Customer a refund of an equitable portion of any sums paid by Customer for the Accuray System or Accuray Product. However, under no circumstances, including failure of the essential purpose of the limited remedy, will Accuray be liable for incidental or consequential damages.

In the interest of conservation of scarce materials, and of efficient utilization of high value parts, Accuray Systems may contain re-manufactured parts. Such parts are subject to the same high standards of quality control applied to other parts and are covered by a standard warranty.

All warranty repair or replacement of parts shall be limited to malfunctions which are, as determined by Accuray, due and traceable to defects in original material or workmanship of Accuray Products. All obligations of Accuray under warranty shall cease in the event of abuse, accident, alteration, misuse or neglect of Accuray Systems or Accuray Products, including but not limited to user modification of the operating environment specified by Accuray in the written Specifications and user modification of any software. In-warranty repair or replaced parts are warranted only for the unexpired portion of the original warranty period.

During the warranty period, the Customer has the option to request warranty service during non-normal working hours. In this case, the Customer shall pay the overtime premium portion of the non-normal hours worked. (Non-normal hourly rate minus normal hourly rate.) After expiration of the warranty period, Customer shall be charged at the then current prices for parts, labor and transportation.

THE FOREGOING LIMITED WARRANTY IS EXPRESSLY IN LIEU OF AND EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, USE OR APPLICATION, UNLESS OTHER WARRANTIES ARE EXPRESSLY AGREED TO IN WRITING BY ACCURAY.

16. Preventive Maintenance and Service Contract

Refer to full service agreements.

17. Indemnity

If it is determined in accordance with applicable law that any fault or neglect of either party, its employees or agents, substantially contributes to damage or injury to third parties, such party shall be responsible in such proportion as reflects its relative fault therefore, and shall hold the other party harmless from and against any and all liability, claims, and costs of whatsoever kind and nature, including court costs and reasonable attorneys fees arising out of or from: (a) any death, personal injury or property damage caused by the negligence or intentionally wrongful acts of such party, its agents, employees and independent contractors; (b) the breach by such party or its subcontractors of the provisions of this Agreement, and (c) other acts or omissions of such party, its agents, employees or subcontractors.

Notwithstanding the foregoing, and notwithstanding any fault or neglect attributable to Accuray, Accuray shall have no responsibility whatsoever for, and Customer shall hold Accuray harmless from, any and all damage or injury which (1) may result during use, operation or service of any Accuray System or Accuray Product by other than Accuray personnel prior to completion of applicable acceptance test by Accuray and the radiation survey by Customer, or (2) may result from or relate to any use, operation or service of any Accuray System or Accuray Product contrary to any written warning or instruction given by Accuray to Customer, including but not limited to user modification of any software.

18. Damages

ACCURAY'S AGGREGATE LIABILITY IN DAMAGES OR OTHERWISE SHALL NOT EXCEED THE PAYMENT, IF ANY, RECEIVED BY ACCURAY FOR THE UNIT OF ACCURAY SYSTEM, ACCURAY PRODUCT OR ACCURAY SERVICE FURNISHED OR TO BE FURNISHED, AS THE CASE MAY BE, RESULTING IN THE LOSS OR DAMAGE CLAIMED.

19. Limitation of Liability

IN NO EVENT SHALL ACCURAY BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR RESULTING LOSS THEREOF, OF ANY KIND, HOWSOEVER CAUSED.

20. Computer Software

Computer software which may be provided with the Accuray System, Accuray Product, Accuray Update or Accuray Upgrade remains the property of Accuray or Accuray's licensors. Accuray hereby grants Customer a perpetual, nonexclusive royalty-free right to use such software only in machine readable form and only in combination with Accuray Systems or Accuray Products with which such software is provided. No computer software provided by Accuray shall be copied or decompiled in whole or in part by Customer, and Customer agrees not to provide any such software, or any portion thereof, to any third party. This license shall terminate when Customer discontinues use of the software or the Accuray Systems or Accuray Products with



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which such software is provided, and upon such termination all software media and materials and all copies thereof shall be returned to Accura by Customer and erased from memory of Customer's computer hardware.

21. Confidentiality

All drawings, designs, specifications, manuals and programs furnished to the Customer by Accura shall remain the confidential and proprietary property of Accura ("Confidential Information"). All such information, except as may be found in the public domain, shall be held in confidence by Customer and shall not be disclosed by Customer to any third parties. Copyright in all materials made available by Accura shall remain with Accura at all times.

"Confidential Information" shall include all information, documentation, and materials, including without limitation, financial information such as books, records, financial statements, contracts, patient information, and other information concerning the business and operation of a party and its operating units which may be disclosed or made available from any source and in any form, including paper record, oral communication, audio recording, and electronic display by such party and its operating units to the other party which derives independent actual or potential commercial value from not being generally known or readily ascertainable through independent development or reverse engineering by persons who can obtain economic value from its disclosure or use, and which is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Notwithstanding the foregoing, "Confidential Information" shall not include information which: (a) as of the date of disclosure is already known to the receiving party; (b) is or becomes part of the public domain, through no act or fault of the receiving party; (c) is lawfully disclosed to the receiving party by a third party which is not obligated to maintain and preserve such information as confidential and proprietary; or (d) is independently developed by or for the receiving party without the benefit of the Confidential Information of the disclosing party. The nondisclosure obligation of this Section shall not apply to the extent disclosure is required by law, regulatory or accrediting agencies or a court of competent jurisdiction.

Each party acknowledges and agrees that all Confidential Information of the disclosing party is confidential to and the sole and exclusive property of the disclosing party or patients, as appropriate, and that any unauthorized disclosure or use of such information will cause irreparable harm, injury, and loss to the disclosing party or patients, as appropriate. Each party agrees to treat the Confidential Information of the other party with the same degree of care as it accords to its own Confidential Information and (a) to use any Confidential Information of the other party solely for the purposes required in connection with the business relationship of the parties; (b) not to disclose any Confidential Information of the other party to any person or entity other than its agents, employees, or representatives who have a need to know such information for the permissible purposes hereunder and in accordance with its obligations under state and federal law; (c) not to reproduce, distribute or otherwise disseminate Confidential Information of the other party, and shall protect Confidential Information of the other party from disclosure by others; and (d) to return the Confidential Information of the other party, including all copies and records thereof, to disclosing party upon its request, or upon the termination of the business relationship of the parties, whichever occurs first.

Each party agrees that the obligations contained in this Section will be honored by its agents, employees, and representatives, and by any subsidiary company, parent company, or company related to such party by common ownership, and its agents, employees, and representatives.

In the event any of the information disclosed during the course of the parties' business relationship does not qualify as Confidential Information, then the parties acknowledge and agree that such information shall nonetheless remain confidential and shall not be disclosed by the receiving party to any other party during the term of the parties' business relationship and for a period of three (3) years following the termination of the business relationship, absent the express written consent of the disclosing party; provided, however, that protected patient information (as that term is defined in 45 CFR 164.501) shall not be disclosed at any time following the execution of this Agreement.

The obligations of the parties under this Section shall survive the expiration, termination, or cancellation of this Agreement and/or the business relationship of the parties, and shall continue to bind the parties, their agents, employees, representatives, successors, and assigns as set forth herein.

Since unauthorized disclosure of Confidential Information will diminish the value to the disclosing party of the proprietary interests that are the subject of this Agreement, if the other party breaches any of its obligations hereunder, the disclosing party shall be entitled to seek all available remedies in equity or in law to protect its interests therein, including but not limited to injunctive and/or monetary relief.

22. Patient Information

In performing any services hereunder, Accura may receive from Customer, or create or receive on behalf of Customer, patient healthcare, billing, or other confidential patient information ("Patient Information"). Patient Information, as the term is used herein, includes all "Protected Health Information," as that term is defined in 45 CFR 164.501. Accura shall use Patient Information only as necessary to provide the services to Customer as set forth in this Agreement. Accura shall comply with all federal laws, rules and regulations relating to the confidentiality of Patient Information, including the applicable provisions of the privacy regulations promulgated pursuant to Health Insurance Portability and Accountability Act of 1998 ("HIPAA").

Customer shall provide Accura with only de-identified Protected Health Information, in accordance with the requirements of 45 CFR 164.514. Any information provided to or shared with Accura in connection with this Agreement shall have all identifying patient information removed, including, but not limited to, names, addresses, zip codes, telephone numbers, social security numbers, medical record numbers, health plan numbers, and so on, and shall be assigned a de-identified record code in accordance with 45 CFR 164.514(c).

23. Cancellations

No order accepted by Accura may be canceled by Customer except by the prior written consent of Accura. Any attempt to assign or cancel without such written consent shall be void. In any such event, with or without Accura's consent, Customer agrees to pay Accura a charge determined solely by Accura to cover the reasonable costs of processing, order handling, re-testing, repackaging and seller damages under the Uniform Commercial Code.

24. Assignments

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Neither party may assign this Agreement without the other party's prior written consent, and such consent shall not be unreasonably withheld, except that either party may assign this Agreement, without the other's consent, to an affiliate or to a successor or acquirer, as the case may be, in connection with a merger or acquisition, or the sale of all or substantially all of the other's assets or the sale of that portion of the other's business to which this Agreement relates. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties' permitted successors and assigns.

25. Disputes and Governing Laws

In the event that a dispute arises between Accuray and Customer with respect to any subject matter governed by this Agreement, such dispute shall be settled as follows. If either party shall have any dispute with respect to this Agreement, that party shall provide written notification to the other party in the form of a claim identifying the issue or amount disputed including a detailed reason for the claim. The party against whom the claim is made shall respond in writing to the claim within 30 calendar days from the date of receipt of the claim document. The party filing the claim shall have an additional 30 calendar days after the receipt of the response to either accept the resolution offered by the other party or escalate the matter. If the dispute is not resolved, either party may notify the other in writing of their desire to elevate the claim to the President of Accuray and the Chief Executive Officer of Customer, or their respective designee. Each shall negotiate in good faith and use his or her best efforts to resolve such dispute or claim. The location, format, frequency, duration and conclusion of these elevated discussions shall be left to the discretion of the representatives involved. If the negotiations do not lead to resolution of the underlying dispute or claim to the satisfaction of either party involved, then either party may pursue resolution by the courts as follows.

All disputes under any contract concerning Accuray Systems, Accuray Products or Accuray Services not otherwise resolved between Accuray and Customer shall be resolved in a court of competent jurisdiction, in Orange or Wake County, State of North Carolina, and in no other place. No action, regardless of form, arising out of, or in any way connected with, any Accuray System, Accuray Product or Accuray Service furnished, or to be furnished, may be brought by Customer more than one (1) year after the cause of action has occurred.

For all international sales, Accuray expressly opts out of the provisions contained in the Convention on Contracts for the International Sale of Goods as permitted by Article 6 in favor of the law of the Uniform Commercial Code Article 2 as adopted in California.

26. Notices

All notices required or permitted under this Agreement will be in writing and delivered in person, effective immediately, by overnight delivery service, effective two (2) business days after deposit with carrier, or by registered or certified mail, postage prepaid with return receipt requested, effective five (5) business days after deposit with carrier. All communications will be sent to the addresses set forth below or to such other address as may be specified by either party in accordance with this Paragraph.

To Accuray:

Accuray Incorporated
Attention: Chief Financial Officer
1310 Chesapeake Terrace
Sunnyvale, CA 94089

To Customer:

with cc to: General Counsel

27. Waiver

The waiver of any breach or default of any provision of this Agreement will not constitute a waiver of any other right hereunder or of any subsequent breach or default.

28. Severability

If any provision of this Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of the Agreement will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by law.

29. Force Majeure

Neither party will be responsible for any failure or delay in its performance under this Agreement (except for the payment of money) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strike, lockout, riot, war, fire, act of God, accident, failure or breakdown of components necessary to order completion; subcontractor or supplier caused delays; curtailment of or failure to obtain sufficient electrical or other energy, raw materials or supplies; or compliance with any law, regulation or order, whether valid or invalid.

30. Amendments

Any amendment or modification of this Agreement must be made in writing and signed by duly authorized representatives of each party. For Accuray, a duly authorized representative must be any of the following: CEO, CFO, or General Counsel.

31. Counterparts

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument.

32. Entire Agreement

This Agreement contains the entire agreement of the parties hereto with respect to the subject matter hereof, and supersedes all prior understandings, representations and warranties, written and oral. If any part of the terms and conditions stated herein are held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions.

33. Access to Persons and Records

Accuray shall provide the North Carolina State Auditor with access to persons and records as a result of all contracts or grants entered into by UNC Hospitals accordance with North Carolina General Statute 147-84.7, upon receipt of prior written request



ACCURAY

Corporate Office:
Accuray Incorporated
310 Chesapeake Terrace
Durham, NC 27704
Phone: 408.716.4600
Fax: 408.716.4620
www accuray.com

Initials: Customer _____
Accuray _____

CyberKnife® G4 Quotation

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from the North Carolina State Auditor. Accuray shall retain all records for a period of four (4) years following completion of this Agreement.

34. Medicare Record Access

In compliance with 42 U.S.C. 1395x (v)(1)(I) and implementing regulations, Accuray agrees, until the expiration of four (4) years after the services are furnished under this Agreement, to allow the Secretary of the Department of Health and Human Services and the Comptroller General access to this Agreement, all applicable purchase orders, and to the books, documents and records of Accuray necessary to verify the nature and extent of the costs of this Agreement. This Section will survive the expiration or termination of this Agreement.

35. Advertising

Neither party shall use the award of this Agreement or its participation in this Agreement as part of any news release or commercial advertising without the prior written consent of the other party. Each party agrees that it will not use the other party's name, trademark or similar identifier in any way without such party's prior written consent. Notwithstanding the foregoing, Accuray may list Customer's name on the Accuray website as Accuray does its other customers, unless and until Accuray receives a written request from Customer, in accordance with Paragraph 25 above, asking Accuray to cease such activity.

36. Taxes

Any sales and use taxes shall be invoiced as a separate item. Customer shall not be responsible for any other taxes, including but not limited to, personal property tax and income tax assessed on Accuray for the services, goods, hardware, software, and/or equipment provided under this Agreement.

[SIGNATURE PAGE FOLLOWS]

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ACCURAY

Corporate Office:
Accuray Incorporated
310 Chesapeake Terrace
Sunnyvale, CA 94089
Phone: 408.716.4600
Fax: 408.716.4620
www accuray.com

Initials: Customer _____
Accuray _____

CyberKnife® G4 Quotation

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IN WITNESS WHEREOF, the parties hereto have caused this CyberKnife G4 Quotation to be executed by their officers, thereunto duly authorized, and so become a binding CyberKnife G4 Purchase Agreement. The parties acknowledge and agree that this CyberKnife G4 Quotation does not become effective until it has been signed by all parties indicated below.

ACCURAY INCORPORATED

CUSTOMER

By: _____

By: _____

Print Name: Robert E. McNamara

Print Name: _____

Title: Senior Vice President & Chief Financial Officer

Title: _____

Date: _____

Date: _____

CUSTOMER PO #: _____

Please make sure that you have selected a Preventive Maintenance and Service Contract (Emerald Elite or Diamond Elite, page 4). A separate Service Contract is attached for your signature.
Please attach original purchase order and deposit to the signed quotation and forward to:

Accuray, Inc.
ATTN: Sales Operations Department
1310 Chesapeake Terrace
Sunnyvale, CA 94089
T. 408.716.4600
F. 408.716.4620

The undersigned acknowledges that the terms and conditions of this Agreement meet the policies and procedures of Accuray.

Signed: _____ Dated: _____
General Counsel, Accuray Incorporated

Signature Page to Accuray CyberKnife G4 Quotation



TomoTherapy[®]
A wholly owned subsidiary of Accuray

June 27, 2017

University of North Carolina Hospitals
101 Manning Drive
Chapel Hill, North Carolina 27599

To Whom It May Concern,

Accuray would like to extend our sincere gratitude for your continued relationship with our company and the usage of our equipment at your facility.

This letter serves to acknowledge the Trade In/Trade Up, per the contract number 05042017BV1-UONC, between UNC Health Care System ("Customer") and Accuray Incorporated (collectively "The Parties"). Legacy, Inc. will be handling the disposition of the existing CyberKnife G4, currently installed at Customer's site, Serial Number 00127 ("Existing System").

The Existing System will be removed from your facility on a date yet to be determined between the Parties. The Existing System will be removed with the understanding that it will not be reinstalled into the State of North Carolina without the proper Certificate of Need (CON) authorization from the state.

We value the relationship we have developed with your organization and look forward to the opportunity to work together to successfully place a new CyberKnife[®] System at your facility.

Sincerely,

DocuSigned by:

3F88F8828C6442B...

Marleen Chan
Director, Sales Operations
Accuray Incorporated

*Effective August 16, 2017, this license is issued to
University of North Carolina Hospitals at Chapel Hill*

*to operate a hospital known as
University of North Carolina Hospitals
located in Chapel Hill, North Carolina, Orange County.*

*This license is issued subject to the statutes of the
State of North Carolina, is not transferable and shall remain
in effect until amended by the issuing agency.*

Facility ID: 923517

License Number: H0157

Bed Capacity: 905

General Acute 799, Rehabilitation 30, Psych 76,

Dedicated Inpatient Surgical Operating Rooms: 6

Dedicated Ambulatory Surgical Operating Rooms: 11

Shared Surgical Operating Rooms: 29

Dedicated Endoscopy Rooms: 9