

NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

MARK PAYNE • Director, Division of Health Service Regulation

December 4, 2018

Denise Gunter  
380 Knollwood Street, Suite 530  
Winston-Salem, NC 27103

**No Review**

**Record #:** 2793  
**Business Name:** FirstHealth Moore Regional Hospital-Richmond  
**Business #:** 742  
**Project Description:** Acquire a mobile CT scanner to serve First Health hospitals  
**County:** HSA V

Dear Ms. Gunter:

The Healthcare Planning and Certificate of Need Section, Division of Health Service Regulation (Agency) received your correspondence regarding the above referenced proposal. Based on the CON law **in effect on the date of this response to your request**, the proposal described in that correspondence is not governed by, and therefore, does not currently require a certificate of need. If the CON law is subsequently amended such that the above referenced proposal would require a certificate of need, this determination does not authorize you to proceed to develop the above referenced proposal when the new law becomes effective.

You may need to contact the Agency's Radiation Protection and Acute and Home Care Licensure and Certification Sections, DHSR to determine if they have any requirements for development of the proposed project.

This determination is binding only for the facts represented in your correspondence. If changes are made in the project or in the facts provided in the correspondence referenced above, a new determination as to whether a certificate of need is required would need to be made by this office.

Please do not hesitate to contact this office if you have any questions.

Sincerely,

Fatimah Wilson  
Team Leader

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

cc: Radiation Protection Section, DHSR  
Acute and Home Care Licensure and Certification Section, DHSR  
Melinda Boyette, Administrative Assistant, Healthcare Planning, DHSR

NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF HEALTH SERVICE REGULATION

HEALTHCARE PLANNING AND CERTIFICATE OF NEED SECTION

LOCATION: 809 Ruggles Drive, Edgerton Building, Raleigh, NC 27603  
MAILING ADDRESS: 2701 Mail Service Center, Raleigh, NC 27699-2701  
www.ncdhs.gov/dhsr/ • TEL: 919-855-3750 • FAX: 919-733-2757

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER



NELSON MULLINS RILEY & SCARBOROUGH LLP  
ATTORNEYS AND COUNSELORS AT LAW

380 Knollwood Street | Suite 530  
Winston-Salem, NC 27103  
T 336.774.3300 F 336.774.3299  
nelsonmullins.com

Denise M. Gunter  
T 336.774.3322 F 336.774.3372  
denise.gunter@nelsonmullins.com

November 28, 2018

**Hand Delivered**

Martha J. Frisone, Chief  
North Carolina Department of Health and Human Services  
Division of Health Service Regulation  
Healthcare Planning and Certificate of Need Section  
809 Ruggles Drive  
Raleigh, North Carolina 27603

Re: Letter of No Review  
FirstHealth Moore Regional Hospital-Richmond  
Richmond, Montgomery, and Hoke Counties  
Health Service Area V

Dear Ms. Frisone:

Pursuant to N.C. Gen. Stat. §§ 131E-176(7a) and 9(b), and 16(a), this letter requests a determination of non-reviewability under the CON Law.

FirstHealth Moore Regional Hospital-Richmond (“FMRH-Richmond”) intends to acquire one mobile GE VCT 64 Slice CT scanner with a Medrad Dual Head Injector. The proposed cost is \$340,000.00. This includes the cost for the CT scanner, the injector, the trailer, and all other costs essential to making the project operational. FirstHealth already owns the truck to transport the mobile trailer. An additional \$10,000.00 has been included into the budget for the project as contingency. A capital cost sheet is included as **Exhibit A**, and the equipment quote is attached as **Exhibit B**. The mobile CT scanner will serve FirstHealth hospitals in Richmond, Montgomery, and Hoke Counties (the “Host Sites”). Each Host Site has a mobile pad with the necessary electrical power. Pursuant to the requirements for mobile imaging technology, the mobile CT scanner will be moved at least once per week between the Host Sites.

N.C. Gen. Stat. § 131E-176(16)a. defines “new institutional health services” to include “[t]he construction, development, or other establishment of a new “health service

Martha J. Frisone  
November 28, 2018  
Page 2

facility." A "diagnostic center" is a type of "health service facility." See N.C. Gen. Stat. §§ 131E-176(7a) & (9b). A "diagnostic center" is defined as:

. . . [A] freestanding facility, program, or provider, including but not limited to, physicians' offices, clinical laboratories, radiology centers, and mobile diagnostic programs, in which the total cost of all the medical diagnostic equipment utilized by the facility which cost ten thousand dollars (\$10,000) or more exceeds five hundred thousand dollars (\$500,000). In determining whether the medical diagnostic equipment in a diagnostic center costs more than five hundred thousand dollars (\$500,000), the costs of the equipment, studies, surveys, designs, plans, working drawings, specifications, construction, installation, and other activities essential to acquiring and making operational the equipment shall be included. The capital expenditure for the equipment shall be deemed to be the fair market value of the equipment or the cost of the equipment, whichever is greater.


N.C. Gen. Stat. § 131E-176(7a).

Since the total capital cost of the project is less than \$500,000, the project is not a "diagnostic center" and therefore not regulated by the CON Law.

Please confirm that the project is not regulated by the CON Law. If you have any questions, please let me know.

Thank you for your time and consideration.

Sincerely,



Denise M. Gunter

Enclosures



PROPOSED CAPITAL COSTS

Project Name: Mobile CT Scanner

Proponent: FirstHealth of the Carolinas, Inc.

A. <u>Site Costs: N/A Because No Land is Being Purchased or Developed</u>		
(1)	Full purchase price of land.....	\$ _____
(2)	Acres _____ Price per Acre \$ _____	\$ _____
(3)	Closing costs.....	\$ _____
(4)	Site Inspection and Survey.....	\$ _____
(5)	Legal fees and subsoil investigation.....	\$ _____
	Site Preparation Costs	\$ _____
	Soil Borings.....	\$ _____
	Clearing-Earthwork.....	\$ _____
	Fine Grade For Slab.....	\$ _____
	Roads-Paving.....	\$ _____
	Concrete Sidewalks.....	\$ _____
	Water and Sewer.....	\$ _____
	Footing Excavation.....	\$ _____
	Footing Backfill.....	\$ _____
	Termite Treatment.....	\$ _____
	Other (Specify).....	\$ _____
	Sub-Total Site Preparation Costs.....	\$ _____
(6)	Other (Specify).....	\$ _____
(7)	Sub-Total Site Costs.....	\$ _____
B. <u>Construction Contract: N/A Because No Construction is Involved</u>		
(8)	Cost of Materials	
	General Requirements	
	Concrete/Masonry	
	Woods/Doors & Windows/Finishes	
	Thermal & Moisture Protection	
	Equipment/Specialty Items	
	Mechanical/Electrical	
	Other (Specify).....	\$ _____
	Sub-Total Cost of Materials.....	\$ _____
(9)	Cost of Labor.....	\$ _____
(10)	Other (Specify).....	\$ _____
(11)	Sub-Total Construction Contract.....	\$ _____
C. <u>Miscellaneous Project Costs</u>		
(12)	Building Purchase.....	\$ <u>N/A</u>
(13)	Fixed Equipment Purchase/Lease.....	\$ <u>350,000</u>
(14)	Movable Equipment Purchase/Lease.....	\$ <u>N/A</u>
(15)	Furniture.....	\$ <u>N/A</u>
(16)	Landscaping.....	\$ <u>N/A</u>
(17)	Consultant Fees	
	Architect and Engineering Fees.....	\$ _____
	Legal Fees.....	\$ _____
	Market Analysis.....	\$ _____
	Other (Specify).....	\$ _____
	Sub-Total Consultant Fees.....	\$ _____
(18)	Financing Costs (e.g. Bond, Loan, etc.).....	\$ <u>N/A</u>
(19)	Interest During Construction.....	\$ <u>N/A</u>
(20)	Other (Specify).....	\$ <u>N/A</u>
(21)	Sub-Total Miscellaneous.....	\$ <u>350,000</u>
(22)	Total Capital Cost of Project (Sum A-C above).....	\$ <u>350,000</u>

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

N/A  
 (Signature of Licensed Architect or Engineer)

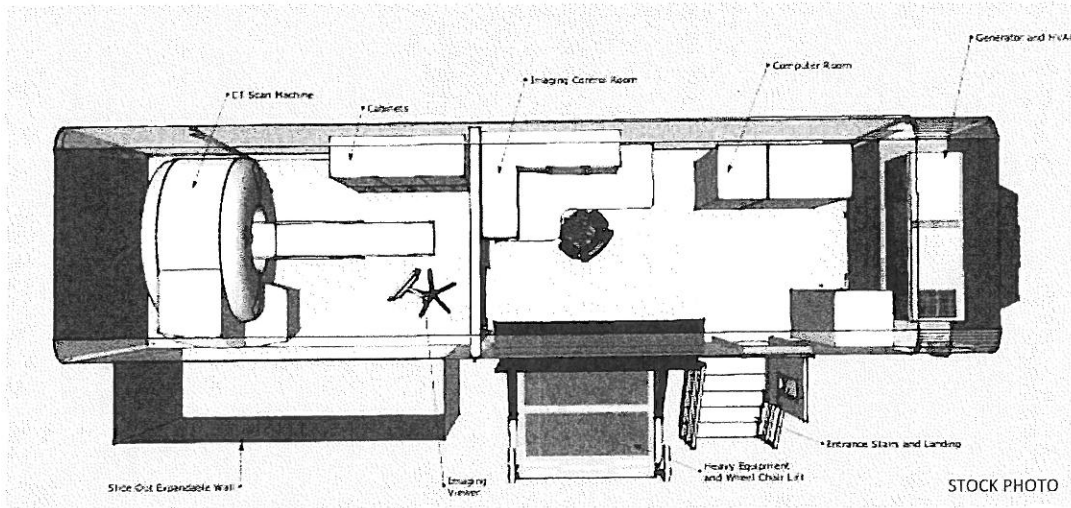
I assure that, to the best of my knowledge, the above capital costs for the proposed project are complete and correct and that it is my intent to carry out the proposed project as described.

[Signature]  
 (Proponent - signature of officer)

CEO  
 (Title of officer)



**FirstHealth of the Carolinas**  
**155 Memorial Drive, P.O. Box 3000**  
**Pinehurst, NC 28374**



## MOBILE CT EQUIPMENT SALE AGREEMENT

AGREEMENT NUMBER	AGREEMENT TYPE	DESCRIPTION OF EQUIPMENT
165832LD DATE: November 7, 2018	Mobile CT Turnkey Sales Agreement	Mobile GE VCT 64 Slice CT w/ Medrad Dual Head Injector

**Oxford Instruments Healthcare**  
**Sales Representative**  
**Leigh Dougherty**

## SPECIFICATIONS

### **LightSpeed CT Package - Refurbished General Electric VCT 64 Slice CT LightSpeed Computed Tomography Scanner Consisting of:**

#### ❖ **High Resolution Scanning Gantry**

- ✓ LightSpeed VCT Gantry Assy.
- ✓ Performix Pro 8.0MHU Tube
- ✓ 85 kW Hi-Frequency Generator
- ✓ Scan 1700 mm w/0.625mm slices in less than 10 seconds
- ✓ Dynamic Circle of Willis Study w/40 mm coverage without table movement
- ✓ Complete a high resolution chest exam in 1.4 seconds
- ✓ Scan Chest/Abdomen/Pelvis in 3.4 seconds w/sub-mm resolution
- ✓ Exclusive V-Res Detector Technology, 64 x 0.625mm acquisition
- ✓ Coverage speed of 175mm /sec w/sub-mm resolution
- ✓ 40 mm anatomical coverage per rotation w/0.625 mm slices
- ✓ Metal free table with metal free accessories
- ✓ Vari-Speed: 0.4, 0.42, 0.45, 0.47, 0.5, 0.6, 0.7, 0.8, 0.9, 1.0
- ✓ Dicom 3.0 Image Storage
- ✓ Cardiac and Respiratory capable

#### ❖ **Patient Positioning Table**

- ✓ 51 cm (21 in.) Minimum Elevation
- ✓ 1700mm or 2000mm Scan able range Patient Travel, 100 mm/sec travel time.
- ✓ 500 lb. Capacity to Performance Specification

#### ❖ **High Voltage Generator/ Power Distribution Unit**

- ✓ kVp Selections - 80, 100, 120 and 140 kVp
- ✓ mA Selections - 10 to 700 in 5 mA Increments

#### ❖ **GOC5 Console w/ CT SOFTWARE OPTIONS:**

- SmartPrep
- AutomA
- 3000 Image Series
- Connect Pro
- Direct-MPR
- Data Export
- CopyComposer
- AutoFilter-and-Transfer
- Patient-64-Slice
- Dynamic-Z-axis Tracking
- SmartScore Pro
- VCT-85kW-Power
- VolumeViewer
- AdvVessel Analysis



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- VCT-Hi-Power
- ASIR
- Sub-0.4-Section-Scan
- NoiseReductionFilter
- EKG Viewer
- CardIQ SnapShot

❖ **CT System to be refurbished and Installed in Trailer to meet or exceed the OEM Specifications for the equipment.**

❖ **Additional Items:**

- Refurbished Trailer.
- Refurbishment of trailer will be limited to:
  - New Tires,
  - New Ceiling Tiles,
  - New Cabinets and Counter Top,
  - New Exterior Paint and Body Work (as required).
- Refurbishment will also include a check and repair, as needed of all trailer systems, including Hydraulic System, HVAC system, generator and exterior lights.

❖ **Includes a Medrad Dual Head Injector**

**\*\*Subject to Availability\*\***

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_

## MOBILE CT EQUIPMENT SALE AGREEMENT

Oxford Instruments Service LLC ("OXFORD INSTRUMENTS HEALTHCARE"), located at 1027 SW 30<sup>th</sup> Avenue, Deerfield Beach, FL 33442, hereby agrees to sell; and FirstHealth of the Carolinas ("PURCHASER"), located at 155 Memorial Drive, P.O. Box 3000, Pinehurst, NC 28374. Billing address is 155 Memorial Drive, P.O. Box 3000, Pinehurst, NC 28374, physical address of equipment to be installed/serviced is 925 Long Drive, Rockingham, NC 28379, hereby agrees to purchase the equipment described below ("Equipment") in accordance with the terms and conditions forth below in this Agreement and the standard terms and conditions set forth in Exhibit A, attached hereto and incorporated to this Agreement by reference:

**PURCHASE PRICE:** Three hundred forty thousand Dollars (\$340,000.00) ("Purchase Price"). The Purchase Price (not including applicable state and local taxes) any other amounts payable under this Agreement shall be paid in U.S. Dollars by the wire transfer of immediately available funds to bank account directed by OXFORD INSTRUMENTS HEALTHCARE.

**EXECUTION OF AGREEMENT AND DEPOSIT BY PURCHASER:** PURCHASER shall return an executed Agreement to OXFORD INSTRUMENTS HEALTHCARE on or before **November 28, 2018**, along with a deposit of **\$102,000.00** (30% of Purchase Price) via wire transfer of immediately available funds to a bank account directed by OXFORD INSTRUMENTS HEALTHCARE. If PURCHASER fails to execute this Agreement and pay the deposit prior to such date, the terms and conditions set forth in this Agreement shall be null and void.

**PAYMENT TERMS:** The Purchase Price shall be paid as follows: (i) 30% of the Purchase Price upon the execution of this Agreement; (ii) 60% upon written notice of shipment to PURCHASER's site and prior to shipment of the Equipment to the PURCHASER'S site; and (iii) 10% upon the first use of the Equipment, but no later than 30 days after the delivery of the Equipment.

**REFURBISHMENT:** Refurbishing of Equipment includes staging, disassembly, inspecting all mechanical parts and adjusting or replacing parts if necessary, along with professional cleaning and painting to look like new.

**LIMITED WARRANTY:** The limited warranty provided by OXFORD INSTRUMENTS HEALTHCARE shall be governed pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof. **Every attempt has been made to assure complete and accurate system specifications to the best of our ability.**

**INSTALLATION, TURNOVER AND ON-SITE APPLICATIONS TRAINING:** The installation and turnover of the Equipment, along with applications training shall be governed pursuant to the terms and conditions set forth on Exhibit "A" attached hereto and made a part hereof.

**DELIVERY DATE:** The Equipment shall be de-installed and delivered on or before **February 28, 2018** ("Delivery Date") at **925 Long Drive, Rockingham, NC 28379**, OXFORD INSTRUMENTS HEALTHCARE shall pay all transportation costs.

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_



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**ACCEPTANCE OF TERMS AND CONDITIONS:** OXFORD INSTRUMENTS HEALTHCARE and PURCHASER have carefully read the terms and conditions of this Agreement and its Standard Terms and Conditions. The undersigned are duly authorized to execute this Agreement on behalf PURCHASER and OXFORD INSTRUMENTS HEALTHCARE.

**SELLER:**  
"OXFORD INSTRUMENTS HEALTHCARE"

**PURCHASER/CUSTOMER:**  
FirstHealth of the Carolinas

\_\_\_\_\_  
OXFORD INSTRUMENTS HEALTHCARE Signature

\_\_\_\_\_  
Purchaser/Customer Signature

\_\_\_\_\_  
Mark Bringolf, Director of Operations  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**EXHIBIT A**  
**STANDARD TERMS AND CONDITIONS**

1. **INCORPORATION OF ADDITIONAL TERMS AND CONDITIONS:** This Exhibit is an integral part of OXFORD INSTRUMENTS HEALTHCARE's offer to sell the Equipment to PURCHASER. By signing the Agreement and the Exhibit and returning it to OXFORD INSTRUMENTS HEALTHCARE, PURCHASER hereby accepts all of the terms and conditions set forth in this Agreement, including, but limited to the terms set forth in this and any other Exhibit.
2. **DEFAULT:**
- (a) If OXFORD INSTRUMENTS HEALTHCARE fails to deliver the Equipment within 45 days after the Delivery Date, **TBD**, then PURCHASER shall have the right to cancel this Agreement and receive a full refund of any and all funds paid to OXFORD INSTRUMENTS HEALTHCARE, including, but limited to all deposits and prepayments. The aforementioned refund shall be PURCHASER's sole and exclusive remedy.
- (b) If PURCHASER fails to comply with the payment terms described on the first page of this Agreement, and such non-payment continues for a period of five (5) business days after such payment due date, then in addition to any and all rights and remedies available to OXFORD INSTRUMENTS HEALTHCARE at law or equity, OXFORD INSTRUMENTS HEALTHCARE shall have the right to cancel this Agreement and retain any and all funds paid to OXFORD INSTRUMENTS HEALTHCARE, including, but limited to all deposits and prepayments.
- (c) In the event OXFORD INSTRUMENTS HEALTHCARE agrees to accept multiple payments to satisfy the Purchase Price which shall be paid over a period of time, PURCHASER hereby grants OXFORD INSTRUMENTS HEALTHCARE a purchase money security interest under the UCC in all Equipment to secure full payment for such goods received. PURCHASER shall execute any documents required by OXFORD INSTRUMENTS HEALTHCARE to perfect such security interest in the Equipment, and where permitted PURCHASER hereby authorizes OXFORD INSTRUMENTS HEALTHCARE to sign and file the same without PURCHASER's signature. PURCHASER agrees to pay any and all expenses related to the preparation and filing of such documents.
3. **TRANSFER OF TITLE:** Upon OXFORD INSTRUMENTS HEALTHCARE's receipt of the full Purchase Price, OXFORD INSTRUMENTS HEALTHCARE shall assign, transfer and convey all of its right, title and interest in the Equipment to PURCHASER, free and clear of all liens and encumbrances.
4. **INSTALLATION, TURNOVER AND ON-SITE APPLICATIONS TRAINING:**
- (a) OXFORD INSTRUMENTS HEALTHCARE shall provide PURCHASER with site planning assistance including preliminary/final room drawings. OXFORD INSTRUMENTS HEALTHCARE shall only perform commercially normal installation.
- (b) PURCHASER shall be responsible to prepare the site in accordance with the site plan and the specifications of the Original Equipment Manufacturer (OEM). All applicable, licenses and/or permits shall be the responsibility of the PURCHASER.
- (c) OXFORD INSTRUMENTS HEALTHCARE shall provide 3-days on-site applications training. The training schedule is generally 4-5 days following the turnover of the Equipment. Training is approved for CEU's.
- (d) The following services shall not be provided by OXFORD INSTRUMENTS HEALTHCARE: (i) Installation of air conditioning units, water chillers, and electrical panels and related equipment and environmentalals which shall be performed by licensed contractors hired by PURCHASER. (ii) Site modifications and renovations to the installation site as would be required by Original Equipment Manufacturer (OEM) specifications.
- (e) The procedure for the installation and turnover of the Equipment, along with on-site applications training is as follow: (i) Upon the delivery of the Equipment and upon PURCHASER's completion of site preparation, OXFORD INSTRUMENTS HEALTHCARE shall commence installation of the Equipment (in accordance with the provision set forth in paragraphs (a) and (b) above); provided that if Purchaser delays the installation of the Equipment or the site has not been properly prepared by Purchaser for installation within 5 business days of the Delivery Date, then the installation and turnover of the Equipment shall be deemed accepted.

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Further, shall pay OXFORD INSTRUMENTS HEALTHCARE a storage fee in the amount of \$1,000.00 per month, and such fees shall be due and payable prior to the delivery and installation of the Equipment at the site. (ii) OXFORD INSTRUMENTS HEALTHCARE shall schedule and provide Purchaser's employees with application training for the Equipment (in accordance with the provision set forth in paragraph (c) above) upon completion of the installation of the Equipment provided; however, if Purchaser delays the application training by more than 5 business days, then the installation and turnover of the Equipment shall be deemed accepted. (iii) Upon completion of the installation of the Equipment and the applications training, OXFORD INSTRUMENTS HEALTHCARE shall provide Purchaser with a Certificate of Acceptance which shall provide that: (A) the Equipment has been properly installed and the Equipment meets or exceeds the original specifications of the original equipment manufacturer, and (B) the application training has been completed. (iv) Purchaser shall have 5 business days from the receipt of the Certificate of Acceptance to provide OXFORD INSTRUMENTS HEALTHCARE with either: (A) written acceptance to the installation and turnover of the Equipment; or (B) provide OXFORD INSTRUMENTS HEALTHCARE with written notice which describes any issues relating to the Equipment's conditions or specifications, the installation of the Equipment, or the application training. (v) If Purchaser fails to provide OXFORD INSTRUMENTS HEALTHCARE with a written response to the Certificate of Acceptance in accordance with subparagraph (iv) above, then the installation and turnover of the Equipment shall be deemed accepted.

5. **RISK OF LOSS:** The risk of loss from any damages or casualty to the Equipment shall pass from OXFORD INSTRUMENTS HEALTHCARE to PURCHASER when the Equipment is duly delivered to the transportation carrier or the Equipment is picked up by the transportation carrier.

6A. **LIMITED WARRANTY FOR CT SYSTEM:**

(a) Subject to the provisions set forth below, OXFORD INSTRUMENTS HEALTHCARE shall provide a limited warranty for a **12-Month** period commencing on the earlier of: (i) acceptance of the Equipment by PURCHASER (in accordance with the terms set forth on Exhibit "A"), or (ii) first clinical use and billing of patient ("Warranty Period"). The warranty coverage period is M-F, 8:00 am – 5:00 pm, excluding holidays.

(b) OXFORD INSTRUMENTS HEALTHCARE warrants that the Equipment is free from defects in material or workmanship under normal use and service. There shall be no warranty on consumables. The limited warranty shall cover all parts and labor, provided, however, the warranty period relating to tube coverage shall be for the earlier of: (i) **twelve (12) months** or (ii)  30M mAs  3,000 exams.

(c) Any Equipment found to be defective during the "Warranty Period" shall be repaired or replaced free of charge, provided that PURCHASER satisfies all of the following conditions: (i) PURCHASER gives written notice of the defect (with reasonable relevant information) to OXFORD INSTRUMENTS HEALTHCARE as soon as reasonably practicable and within the Warranty Period; (ii) the Equipment has been used solely for its proper purpose and in accordance with the operating instructions specified by the original equipment manufacturer (including, but not limited to meet or exceed the proper power requirements in accordance with the specifications of the original equipment manufacturer and all HVAC requirements); (iii) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by PURCHASER or its customers, agents or servants, (iv) there has been no unauthorized alteration, repair or maintenance or the use of sub-standard consumables; (v) the defect has not arisen from any design, specification, component or material supplied by or on behalf of PURCHASER; (vi) no part of the Equipment has been replaced with a part not supplied or approved by OXFORD INSTRUMENTS HEALTHCARE; (vii) all repairs to the Equipment have been made by personal of OXFORD INSTRUMENTS HEALTHCARE or approved by OXFORD INSTRUMENTS HEALTHCARE; (viii) PURCHASER has made all payments due and owing to OXFORD INSTRUMENTS HEALTHCARE. In the event PURCHASER fails to meet the requirements set forth in subparagraph (c)(ii) above, OXFORD INSTRUMENTS HEALTHCARE shall have the right to impose additional charges to PURCHASER or void the limited warranty set forth herein, as provided by OXFORD INSTRUMENTS HEALTHCARE in its sole discretion.

(d) PURCHASER shall be liable for any costs incurred by OXFORD INSTRUMENTS HEALTHCARE in responding to claims caused by operator error or incorrect application or other default of PURCHASER or other third party;

(e) PURCHASER shall pay the costs of all consumables.

(f) OXFORD INSTRUMENTS HEALTHCARE, at its sole discretion, shall determine whether to replace or repair the Equipment.

(g) If a part fails within this Warranty Period and is replaced or repaired, then the new part will have a warranty period equal to the remaining period of the part that failed.

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_

(h) OXFORD INSTRUMENTS HEALTHCARE, at its option and sole discretion, may repair the Equipment at the site of PURCHASER or direct PURCHASER to have the Equipment returned to OXFORD INSTRUMENTS HEALTHCARE's premises. If repairs are made at the location of PURCHASER, OXFORD INSTRUMENTS HEALTHCARE will not charge for the cost of materials or labor but will, at its discretion, charge travelling and subsistence expenses incurred by OXFORD INSTRUMENTS HEALTHCARE's representatives; and

(i) PURCHASER shall accord OXFORD INSTRUMENTS HEALTHCARE and its representatives or agents sufficient and timely access to the Equipment to enable its staff to inspect and adjust, repair, remove or replace the agents sufficient and timely access to the Equipment to enable its staff to inspect and adjust, repair, remove or replace the Equipment; and

(j) THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, DESCRIPTION AND FITNESS FOR PARTICULAR PURPOSE.

**6B. LIMITED WARRANTY FOR TRAILER:**

(a) Subject to the provisions set forth below, OXFORD INSTRUMENTS HEALTHCARE shall provide a limited warranty for a **30-Day** period commencing on the earlier of: (i) acceptance of the Equipment by PURCHASER (in accordance with the terms set forth on Exhibit "A"), or (ii) first clinical use and billing of patient ("Warranty Period"). The warranty coverage period is M-F, 8:00 a.m. – 5:00 p.m., excluding holidays.

(b) OXFORD INSTRUMENTS HEALTHCARE warrants that the Equipment is free from defects in material workmanship under normal use and service. There shall be no warranty on consumables. The limited warranty shall cover all parts and labor.

(c) Any Equipment found to be defective during the "Warranty Period shall be repaired or replaced free of charge, provided that PURCHASER satisfies all of the following conditions: (i) PURCHASER gives written notice of the defect (with reasonable relevant information) to OXFORD INSTRUMENTS HEALTHCARE as soon as reasonably practicable and within the Warranty Period; (ii) the Equipment has been used solely for its proper purpose and in accordance with the operating instructions specified by the original equipment manufacturer (including, but not limited to meet or exceed the proper power requirements in accordance with the specifications of the original equipment manufacturer and all HVAC requirements); (iii) the defect has not been caused by fire, accident, misuse, neglect, incorrect installation by PURCHASER or its customers, agents or servants, (iv) there has been no unauthorized alteration, repair or maintenance or the use of sub-standard consumables; (v) the defect has not arisen from any design, specification, component or material supplied by or on behalf of PURCHASER; (vi) no part of the Equipment has been replaced with a part not supplied or approved by OXFORD INSTRUMENTS HEALTHCARE; (vii) all repairs to the Equipment have been made by personal of OXFORD INSTRUMENTS HEALTHCARE or approved by OXFORD INSTRUMENTS HEALTHCARE; (viii) PURCHASER has made all payments due and owing to OXFORD INSTRUMENTS HEALTHCARE. In the event PURCHASER fails to meet the requirements set forth in subparagraph (c)(ii) above, OXFORD INSTRUMENTS HEALTHCARE shall have the right to impose additional charges to PURCHASER or void the limited warranty set forth herein, as provided by OXFORD INSTRUMENTS HEALTHCARE in its sole discretion.

(d) PURCHASER shall be liable for any costs incurred by OI SERVICE in responding to claims caused by operator error or incorrect application or other default of PURCHASER or other third party;

(e) PURCHASER shall pay the costs of all consumables.

(f) OXFORD INSTRUMENTS HEALTHCARE, at its sole discretion, shall determine whether to replace or repair the Equipment.

(g) If a part fails within this Warranty Period and is replaced or repaired, then the new part will have a warranty period equal to the remaining period of the part that failed.

(h) OXFORD INSTRUMENTS HEALTHCARE, at its option and sole discretion, may repair the Equipment at the site of PURCHASER or direct PURCHASER to have the Equipment returned to OI SERVICE's premises. If repairs are made at the location of PURCHASER, OXFORD INSTRUMENTS HEALTHCARE will not charge for the cost of materials or labor but will, at its discretion, charge travelling and subsistence expenses incurred by OXFORD INSTRUMENTS HEALTHCARE's representatives; and

(i) PURCHASER shall accord OXFORD INSTRUMENTS HEALTHCARE and its representatives or agents sufficient and timely access to the Equipment to enable its staff to inspect and adjust, repair, remove or replace the agents sufficient and timely access to the Equipment to enable its staff to inspect and adjust, repair, remove or replace the Equipment; and

(j) THIS WARRANTY IS GIVEN IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY, DESCRIPTION AND FITNESS FOR PARTICULAR PURPOSE.

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_

**7. LIMITATION OF WARRANTIES AND LIABILITY, HOLD HARMLESS:**

(a) PURCHASER ACKNOWLEDGES THAT OXFORD INSTRUMENTS HEALTHCARE DID NOT MANUFACTURE THE EQUIPMENT, AND THAT EXCEPT AS SET FORTH HEREIN, OXFORD INSTRUMENTS HEALTHCARE MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE, WITH RESPECT TO THE EQUIPMENT. THIS AGREEMENT STATES OXFORD INSTRUMENTS HEALTHCARE'S ENTIRE OBLIGATION WITH RESPECT TO THIS TRANSACTION. EXCEPT AS SET FORTH HEREIN, OXFORD INSTRUMENTS HEALTHCARE PROVIDES NO WARRANTY OF OPERABILITY AND WILL HAVE NO LIABILITY FOR ANY FAILURE OF THE EQUIPMENT AFTER PURCHASER OR ITS AGENTS TAKE TITLE AND BEGIN DEINSTALLATION. IN NO EVENT WILL OXFORD INSTRUMENTS HEALTHCARE OR ITS AGENTS BE LIABLE FOR ANY CONSEQUENTIAL OR INCIDENTAL DAMAGES, INCLUDING LOSS OF USE, PROJECTED PROFITS, OR OTHER FINANCIAL LOSSES DERIVING FROM THE SALE OR USE OF THE ABOVE MENTIONED EQUIPMENT, NOR SHALL OXFORD INSTRUMENTS HEALTHCARE OR ITS AGENTS BE LIABLE FOR ANY DAMAGES FOR BODILY INJURY.

(b) PURCHASER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS OXFORD INSTRUMENTS HEALTHCARE AGAINST ANY AND ALL CLAIMS, JUDGEMENTS, COSTS (INCLUDING ACTUAL ATTORNEY FEES), EXPENSES, OR OTHER LOSSES TO ANY PERSON, GROUP OR ENTITY, DERIVING FROM OXFORD INSTRUMENTS HEALTHCARE'S SERVICES. IN THE EVENT THAT THE TRANSFER IS NOT COMPLETED FOR ANY REASON, INCLUDING FORCE MAJEURE, ACTS OF WAR OR GOD, OR WITHDRAWAL OF THE EQUIPMENT FOR SALE, THE SOLE LIABILITY OF OXFORD INSTRUMENTS HEALTHCARE SHALL BE LIMITED TO THE RETURN OF ALL MONIES ALREADY PAID TO OXFORD INSTRUMENTS HEALTHCARE BY PURCHASER, INCLUDING DEPOSITS. PURCHASER WILL HAVE NO OTHER REMEDY UNDER LAW FOR ANY REASON WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOSS OF USE OR DERIVATIVE PROFITS OR ANY OTHER DAMAGES.

**8. SOFTWARE.**

(a) PURCHASER acknowledges and agrees that OXFORD INSTRUMENTS HEALTHCARE has no rights, titles, and interest in and to software relating to the Equipment, and that OXFORD INSTRUMENTS HEALTHCARE has no right to grant any licenses thereunder. PURCHASER further acknowledges and agrees that all rights, title and interest in such software remain with the original equipment manufacturer ("OEM").

(b) OXFORD INSTRUMENTS HEALTHCARE makes no representations and warranties to PURCHASER that the software was properly installed in the Equipment and that it will perform substantially as described in the OEM's specification for the Equipment.

(c) By executing this Agreement, the PURCHASER hereby designates OXFORD INSTRUMENTS HEALTHCARE as PURCHASER's attorney in fact, with full power and authority to act on PURCHASER's behalf with the OEM in connection with obtaining the necessary software from the OEM to operate, repair or maintain the Equipment.

**9. TAXES:** Any sales, use, property, or other taxes or regulatory fees applicable to this transaction will be in addition to the purchase price quoted, and shall be due and payable by PURCHASER. PURCHASER shall provide to OXFORD INSTRUMENTS HEALTHCARE proof of any claimed exemption from the foregoing items.

**10. SUBCONTRACTORS:** OXFORD INSTRUMENTS HEALTHCARE reserves the right to utilize sub-contracts for any of the required to meet its obligations under this Agreement.

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_



**11. APPLICABLE LAW, ARBITRATION, LITIGATION, JURISDICTION, AND VENUE:**

(a) This Agreement shall be governed by and interpreted by the laws of the State of Massachusetts. Any Controversy or Claim arising out of or in relation to this Agreement, or breach thereof, shall be submitted to binding arbitration. Any such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, but not necessarily administered by the American Arbitration Association. The venue of any such arbitration shall be the State of Massachusetts. Any controversy will be submitted to a panel of three arbitrators. PURCHASER and OXFORD INSTRUMENTS HEALTHCARE shall each select one arbitrator and those arbitrators shall select a third arbitrator. Any arbitrator must be a member of the Massachusetts Bar Association. The fees for the arbitrators will be levied as follows: PURCHASER and OXFORD INSTRUMENTS HEALTHCARE will each be responsible for paying the respective fee of the arbitrator they selected. PURCHASER and OXFORD INSTRUMENTS HEALTHCARE will each pay fifty percent (50%) of fees charged by the third arbitrator. Judgment upon the award rendered by the arbitrators may be entered and enforced by any court having jurisdiction. The prevailing party in arbitration shall be awarded all costs incurred in connection with the pursuit of its claims, including filing fees, arbitrators' fees, and reasonable attorney fees.

(b) PURCHASER hereby consents to personal jurisdiction in the State of Massachusetts and to venue in the county or federal district in which OXFORD INSTRUMENTS HEALTHCARE maintains its headquarters.

**12. ENTIRE AGREEMENT, NON-CANCELLATION:** This Agreement (and all exhibits) represents the entire agreement between the parties, is a final expression of that agreement, is non-cancelable, and supersedes any previous oral or written agreements between the parties. Any changes must be in writing and signed by both parties. This Agreement will not be binding until signed by both parties, and can be withdrawn by either party at any time, without notice, prior to signature by either party.

**13. MISCELLANEOUS PROVISIONS:**

(a) Paragraph headings used in this Agreement are of no legal effect;

(b) If any provision contained in this Agreement is determined to be invalid, illegal or otherwise unenforceable, the remaining provisions shall be fully enforceable;

(c) Any forbearance by either party from enforcing any term of this Agreement shall not constitute a waiver of any right under this Agreement, unless stated in writing;

(d) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. A copy of a signature received through telefax transmission or other electronic means (including in Adobe PDF or similar format) shall bind the party whose signature is so received as if such signature were an original;

(e) PURCHASER may not assign any of its rights or obligations under this Agreement without the prior written consent of OXFORD INSTRUMENTS HEALTHCARE which consent shall not be unreasonably withheld.

(f) All Exhibits to this Agreement are expressly made a part of this Agreement as fully as though completely set forth in this Agreement;

(g) This Agreement and the Attachments hereto constitute the entire agreement between the contracting parties concerning the subject matter hereof. All prior agreements, discussions, representations, warranties and covenants are merged herein. There are no warranties, representations, covenants or agreements, express or implied, between the parties except those expressly set forth in this agreement. Any amendments or modifications of this agreement shall be in writing and executed by the contracting parties. Should there be any inconsistency between the terms and conditions set forth in the main body of this agreement, and the terms and conditions specified in the Addendum the provisions of the Addendum shall prevail and supersede the inconsistent provisions of the main body of this agreement;

CUST. INT. \_\_\_\_\_ OIHC INT. \_\_\_\_\_



# Healthcare



*The Business of Science<sup>®</sup>*

OXFORD INSTRUMENTS HEALTHCARE and PURCHASER do each hereby agree and accept the terms and conditions set forth in this Exhibit.

**SELLER:**  
"OXFORD INSTRUMENTS HEALTHCARE"

**PURCHASER/CUSTOMER:**  
FirstHealth of the Carolinas

\_\_\_\_\_  
OXFORD INSTRUMENTS HEALTHCARE Signature

\_\_\_\_\_  
Purchaser/Customer Signature

\_\_\_\_\_  
Mark Bringolf, Director of Operations  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

*CONFIDENTIAL*



## CONTRACT AMENDMENT

**AMENDMENT TO CONTRACT AGREEMENT NUMBER: 165832LD**  
**AMENDMENT A**  
**AMENDMENT REVISION: 1**

This agreement is made and entered into this **11th** day of **November, 2018** between Oxford Instruments Service LLC ("OXFORD INSTRUMENTS HEALTHCARE"), principally based at Deerfield Beach, Florida, and **FirstHealth of the Carolinas** ("CUSTOMER") based in **155 Memorial Drive, P.O. Box 3000, Pinehurst, NC 28374**.

•**TRADE-IN:** This sale includes the trade-in of a Philips Brilliance 16 slice CT Scanner (XR-29 Compliant). Trade-in will be based upon inspection of the Philips Brilliance.

•**TERMS AND CONDITIONS:** All other terms and conditions in effect with the existing Agreement will remain unchanged.

IN WITNESS WHEREOF, Oxford Instruments Service LLC ("OXFORD INSTRUMENTS HEALTHCARE") and **FirstHealth of the Carolinas** caused this Amendment to be executed by their authorized agents as of the date first written above.

**SELLER:**  
**"OXFORD INSTRUMENTS HEALTHCARE"**

**PURCHASER/CUSTOMER:**  
**FirstHealth of the Carolinas**

\_\_\_\_\_  
OXFORD INSTRUMENTS HEALTHCARE Signature

\_\_\_\_\_  
Purchaser/Customer Signature

\_\_\_\_\_  
Mark Bringolf, Director of Operations  
Print Name and Title

\_\_\_\_\_  
Print Name and Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date