

MASTER FACILITY RENTAL AGREEMENT

This Master Facility Rental Agreement ("Agreement") is made and entered into on April 4, 2019 ("Effective Date") by and between Arrow International, Inc., with a place of business at 2400 Bernville Road Reading, PA 19605 ("Company") and City of Santa Fe ("Provider") with a place of business at 200 Lincoln Avenue, Santa Fe, NM 87501. The Company and Provider are collectively referred to as the "Parties" and, at times throughout this Agreement, individually as the "Party."

RECITALS

WHEREAS, Provider provides facilities for workshops, seminars, and other programs for medical educational training with human and/or animal anatomical tissue specimens at its training facility ("Facility"); and

WHEREAS, Company organizes or sponsors such programs and desires to utilize the Facility to conduct training programs from time to time as mutually agreed to by the parties and set forth on individual Schedules to be agreed upon by the parties and periodically attached to this Agreement (each, a "Program") on the dates for each Program as set forth in each applicable Schedule (each, a "Rental Period"), subject to the terms and conditions of this Agreement.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged the Parties agree as follows:

1. FACILITY RENTAL; PROVIDER SERVICES.

(a) As a "master" form of contract, this Agreement allows the Company to contract with Provider for multiple Programs through the issuance of Schedules as described in Section 1(b) below, without having to re-negotiate the basic terms and conditions contained in this Agreement.

(b) The Parties will separately negotiate and set forth the specific details of each Program under this Agreement in writing on terms and in a form acceptable to and signed by an authorized representative of each Party (a "Schedule"). A sample Schedule is attached to this Agreement as Schedule A-1. Each Schedule will include, as appropriate, the description of Program, the services that Provider will be providing, dates and duration of the Program, budget and payment schedule. Each Schedule shall be subject to all of the terms and conditions of this Agreement, in addition to the specific details set forth in the Schedule. To the extent that any terms or provisions of a Schedule conflict with the terms and provisions of this Agreement, the terms and provisions of this Agreement shall control, except to the extent that the applicable Schedule expressly and specifically states that the Schedule supersedes the Agreement on a specific matter. All Schedules, once signed by an authorized representative of each Party, together with any exhibits, will be incorporated and made part of this Agreement by reference.

(c) Company shall have access to the Facility from the Program start time to the Program end time, which includes reasonable time for setup and breakdown before and after the Program. Company shall not use the Facility for any purposes other than to setup, conduct and breakdown the Program. Company shall have access to the designated Program area, restrooms and all other common areas.

(d) The Facility rented to Company for the Program, and the services provided by Provider in connection with the Program as set forth in this Agreement does not exceed that which is reasonably necessary to accomplish the commercially reasonable business purposes of this Agreement.

(e) The parties agree that all individuals brought to Provider's Facility by Company must comply with all of Provider's applicable policies, procedures, directives, and instructions. Failure to do so may result in Provider's requirement that such individual be removed from the Facility and terminate their participation in a Program.

(f) Subject to the terms and conditions of this Agreement, Provider hereby grants to the Company the right to use Premises at the times and for the purposes listed on the Schedule. Company accepts the Premises in its present state and agrees that it is in adequate condition, without any representation or warranty by the Provider, as to the condition of the Premises or as to the fitness of the Premises for any use. Subletting this Agreement and/or transferring any rights in this Agreement will not be permitted and is grounds for immediate termination of this Agreement.

(g) Company shall not exceed the occupancy capacity of the Premises as established by the City Fire Department.

2. EQUIPMENT AND SUPPLIES. Company will provide the products listed in the applicable Schedule, which products shall remain the exclusive property of Arrow.

3. PROVISION OF HUMAN SPECIMENS. Each Schedule shall indicate which Party is responsible for providing human anatomic specimens ("Specimens"). Additional terms for Company-provided Specimens are set forth in Schedule B. Additional terms for Provider-provided Specimens are set forth in Schedule C.

4. FEES. The fees for the use of the Facility are set forth in each applicable Schedule, which is inclusive of institutional overhead and related expenses. The Fee amount shall only change if Provider performs different and/or additional services from that set forth herein and/or in the applicable Schedule pursuant to Company's written request, and as mutually agreed to by the parties in writing. Provider shall submit invoices to Company no later than 30 days following the Program.

5. VALUABLES. Company acknowledges that Provider will not be responsible for the loss, damage or destruction of any valuables brought onto the Facility.

6. REPRESENTATIONS AND WARRANTIES.

(a) Provider represents and warrants that: (i) it has full right and authority to enter into and be bound by all of the terms and conditions of this Agreement, and has the necessary resources, licenses, permits and qualifications to perform its obligations hereunder; (ii) it shall comply with all applicable laws and regulations governing the use of the Facility and the conduct of the Program.

(b) Company represents and warrants that: (i) it has full right and authority to enter into and be bound by all of the terms and conditions of this Agreement; and (ii) it shall comply with all applicable laws and regulations governing the conduct of the Program.

7. INDEMNIFICATION.

(a) Company, company's employees, agents, representatives, guests and invitees, hereby waive any and all claims for injuries, damages or losses to my person or property which may be caused directly or indirectly, by an act, omission or negligence arising from and/or related to the Provider, its officers, employees or agents. Company, Company's employees, agents, representatives, guests and invitees, hereby release and assume all risks associated with participation, observation, or use of any equipment and the City of Santa Fe facilities and agree to hold harmless, not sue and indemnify, the Provider, its officers, employees or agents ("Released Parties") for any and all claims, injuries, damages, losses, causes of action, suits, costs, charges, demands, or liabilities, which may be caused to person or property, directly or indirectly, by an act, omission or negligence arising from and/or related to the acts and/or omissions of the Provider, its officers, employees or agents, including but not limited to claims arising from the use of any equipment and/or the City of Santa Fe facilities, from the activity itself, from the acts of others, from observation of the activity, or from the unavailability of emergency medical care. , Company's employees, agents, representatives, guests and invitees, understand that this Release includes

those claims, injuries or damages based on death, bodily injury or property damage whether or not caused by the negligent acts, omissions or other fault of the Released Parties.

8. NEW MEXICO TORT CLAIMS ACT

Any liability incurred by the PROVIDER in connection with this Agreement is subject to the immunities and limitations of the New Mexico Tort Claims Act, Section 41-4-1, et. seq. NMSA 1978, as amended. The PROVIDER and its "public employees" as defined in the New Mexico Tort Claims Act, do not waive sovereign immunity, do not waive any defense and do not waive any limitation of liability pursuant to law. No provision in this Agreement modifies or waives any provision of the New Mexico Tort Claims Act.

9. INSURANCE. Each Party shall have the following insurance policies: (i) comprehensive general liability insurance including bodily injury and property damage liability and completed operations liability in an amount not less than \$1,000,000 combined single limit per occurrence and \$2,000,000 aggregate and (ii) workers' compensation insurance for all employees in compliance with state law. Each Party shall provide proof of insurance as requested by the other Party.

10. TERM; TERMINATION.

(a) The term of this Agreement shall commence on the Effective Date and shall terminate on May 18, 2019, unless earlier terminated pursuant to this Section 10.

(b) Company may terminate this Agreement (thereby canceling any pending Program) for any reason or no reason upon thirty (30) days prior written notice to Provider. Upon such termination, Company shall pay (i) any then outstanding unpaid fees and (ii) any reasonable unrecouped out-of-pocket costs incurred by Provider in connection with cancelled pending Programs.

(c) Provider may terminate this Agreement and/or any specific Program on thirty (30) days notice prior to the scheduled date of any Program and, upon such termination, Provider shall return the full amount of any pre-paid amounts by Company.

(d) Either Party may terminate this Agreement without further liability upon a material breach of this Agreement by the other Party by providing written notice of such breach to the other Party, which breach is not cured within thirty (30) days after notification of such breach. Upon termination by Company as a result of a material breach by Provider, Provider shall return any pre-paid amounts to Company.

10. PUBLICITY. Except as may be otherwise set forth herein, neither Party shall make use of the name, trademark, and/or logo of the other party for any purpose without the prior written consent of the other Party.

11. FORCE MAJEURE. Neither Party shall be liable for damages of any kind due to delay or failure to perform any obligation under this Agreement if such delay or failure results directly or indirectly from circumstances beyond its control. Such circumstances shall include, but shall not be limited to, acts of God, acts of war, civil commotions, riots, strikes, lockouts, acts of the government, disruption of telecommunications transmissions, accident, fire, water damages, flood, earthquake or other natural catastrophe.

12. NOTICES. Whenever notices are required or permitted under this Agreement, they shall be given by personal delivery, or registered or certified mail, return receipt requested, and postage prepaid, or sent by federal overnight courier to addresses set forth below, unless otherwise specified from time to time. Service of any such notice shall be deemed complete as of the day of actual delivery as shown by the addressee's registry or certification receipt or the expiration of the third day after the date of mailing, whichever occurs first.

Arrow International, Inc.
Attn: Vice President of Clinical Affairs
3015 Carrington Mill Boulevard
Morrisville, NC 27560

City of Santa Fe Fire Department
Assistant Chief Greg Cliburn
P.O. Box 909
Santa Fe, NM 87508

13. **CONFIDENTIALITY.** Each Party (the "Recipient Party") agrees that any confidential or proprietary material or information regarding the intellectual property, technology developments, business or affairs of the other (the "Disclosing Party") disclosed to Recipient Party or obtained by Recipient Party from the Disclosing Party which the Disclosing Party clearly identifies as confidential at the time of disclosure ("Confidential information"), will not be disclosed by the Recipient Party to any other person or used by Recipient Party for its own benefit or gain or in any other manner except as may be expressly authorized by the Disclosing Party.

The Parties agree that the Recipient Party's obligations with respect to handling, disclosing, reproducing, and using Disclosing Party's Confidential Information are not applicable to any portion(s) of the Confidential Information which:

- (a) is in the public domain prior to receipt by the Recipient Party or subsequent to the date of receipt without breach of this Agreement by the Recipient Party, or
- (b) is known, as evidenced by documentation, to the Recipient Party prior to disclosure by the Disclosing Party, or
- (c) is disclosed with the prior written approval of the Disclosing Party, or
- (d) is disclosed without restriction to the Recipient Party by a third party having a bona fide right to disclose same to the Recipient Party and without breach of this Agreement by the Recipient Party, or
- (e) is subject to disclosure pursuant to any applicable law or regulation.

The terms of this provision shall survive termination or expiration of this Agreement.

14. **COMPLIANCE WITH LAWS.** The Parties agree to comply with all applicable federal, state and local laws, regulations, ordinances, government agency interpretation of laws or regulations and orders ("Laws and Regulations") with respect to the performance of all provisions of this Agreement. In addition, the parties intend for this Agreement to comply with the federal anti-kickback statute, 42 USC 1320 a-7b (b) and its regulations. In the event there shall be a change to any Laws and Regulations or the interpretation of any of the foregoing, the adoption of new Laws and Regulations, any of which are reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated for its services under this Agreement, or which shall make this Agreement unlawful, the Parties shall immediately enter into good faith negotiations regarding a new service arrangement or basis for compensation for the rights assigned and services furnished pursuant to this Agreement that complies with the Laws and Regulations that approximates as closely as possible the economic position of the Parties prior to the change. In the event that either Party reasonably determines that this Agreement may not be modified to comply with the foregoing change to the Laws and Regulations, such Party may terminate this Agreement.

15. **NO REFERRALS.** The Parties acknowledge that the Fees payable to Provider for the Rental Periods are consistent with fair market value in arms-length transactions, and no amount paid pursuant to this Agreement, or any other agreement between the Parties, is intended to be, nor shall it be construed to be an inducement or payment for, or in any way dependent upon, the referral of customers or the generation of business to Company by Provider or any hospital or health care provider with which Provider is affiliated or does business. Provider is not required to refer any health care providers or other customers to Company. In no event will the compensation paid to Provider under this Agreement vary or depend upon any business that may have been or may be generated by Provider for Company. In interpreting and enforcing this Agreement, this Agreement shall be construed for all purposes as an Agreement meeting the requirements of 42 CFR §1001.952.

16. REPRESENTATION OF NON-EXCLUSION. Company and Provider represent and warrant that as of the Effective Date, neither they nor any of their employees providing services under this Agreement are:

(a) excluded from a federal health care program as outlined in Sections 1128 and 1156 of the Social Security Act (see the Office of Inspector General of the Department of Health and Human Services List of Excluded Individuals/Entities at <http://www.oig.hhs.gov/fraud/exclusions.asp>);

(b) debarred by the FDA under 21 U.S.C. 335a (see the FDA Office of Regulatory Affairs Debarment List at http://www.fda.gov/ora/compliance_ref/debar/);

(c) otherwise excluded from contracting with the federal government (see the Excluded Parties Listing System at <https://www.epls.gov>).

The Parties also represent that if they or any of their employees who provides items or services under this Agreement becomes so excluded, debarred, or suspended during the term of this Agreement, the applicable Party will promptly notify the other Party. Upon such notification, the other Party shall have the right to immediately terminate this Agreement.

17. INDEPENDENT CONTRACTORS. The relationship between the Parties under this Agreement shall be that of independent contractors, and not as an employee or agent of the other Party. Nothing in this Agreement shall render either Party, or any of its employees, subcontractors or agents, an employee, subcontractor or agent of the other Party, nor authorize or empower a Party or its employees, subcontractors or agents to speak for, represent or obligate the other Party in any way.

18. MISCELLANEOUS. This Agreement, together with the exhibits attached hereto, constitutes the entire agreement between the Parties concerning the subject matter hereof. This Agreement may not be amended without the prior written consent of the Parties. This Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective permitted successors and assigns. No party may assign this Agreement or any rights hereunder without the prior written consent of the other Party, provided, however, that Company may assign this Agreement to an affiliate or in the event of a merger or acquisition of all or substantially all of its assets. The failure of either Party to enforce or require performance of any provision of this Agreement shall in no way operate as a waiver or affect the right of such Party at a later time to enforce the same. *This Agreement shall be construed in accordance with the laws of the State of New Mexico, without giving regard to its conflicts of law principles.*

19. APPLICABLE LAW; CHOICE OF LAW; VENUE

COMPANY shall abide by all applicable federal and state laws and regulations, and all ordinances, rules and regulations of the PROVIDER of Santa Fe. In any action, suit or legal dispute arising from this Agreement, the COMPANY agrees that the laws of the State of New Mexico shall govern. The parties agree that any action or suit arising from this Agreement shall be commenced in a federal or state court of competent jurisdiction in New Mexico. Any action or suit commenced in the courts of the State of New Mexico shall be brought in the First Judicial District Court.

20. THIRD PARTY BENEFICIARIES

By entering into this Agreement, the parties do not intend to create any right, title or interest in or for the benefit of any person other than the PROVIDER and the COMPANY. No person shall claim any right, title or interest under this Agreement or seek to enforce this Agreement as a third party beneficiary of this Agreement.

21. SEVERABILITY

In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality, and enforceability of the remaining

provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby.

22. NON-DISCRIMINATION; AMERICANS WITH DISABILITIES.

Company shall not unlawfully discriminate in the admission of any person upon the basis of ethnicity, race, age, religion, creed, color, national origin, ancestry, sex, gender, sexual orientation, physical or mental disability, medical condition, or citizenship status.

Arrow International, Inc.

By: Dan Smith
Name: Dan Smith
Title: Sr. Director, Clinical Affairs
Date: 11-Apr-2019

Provider

By: [Signature]
Name: Erik Litzenberg
Title: City Manager
Date: 5/2/19

Attest:

By: [Signature]
Yolanda Y. Vigil, City Clerk
Date: 5-6-19 aw

Approved as to Form:

By: [Signature]
Erin K. McSherry, City Attorney
Date: 4/29/19

Approved:

By: [Signature]
Mary McCoy, Finance Director
Date: _____

SCHEDULE A -1

Facility Rental Program Summary Schedule

This Facility Rental Program Summary Schedule dated 5/17/2019 is subject to the terms and conditions of that certain Master Services Agreement dated 4/4/2019 between Arrow International, Inc. ("Company") and City of Santa Fe ("Provider").

Location: Santa Fe FD Station 5 (Training Facility) 1130 Siler Rd. Santa Fe, NM 87507

Rental Period: 5/16 3-5pm for set up 5/17 6am to 7:30pm for execution and clean up

Services/Equipment Provided by Provider: Lab space.

Fees: \$0

Payment Schedule: N/A

Services/Equipment Provided by Arrow International, Inc.: conduct hands on learning using Arrow EZ-IO® Intraosseous Infusion System and Airway products such as but not limited to: LMA Supreme, Mad Nasal and Airtrach. All tissue, floor covering, surgical instruments, ppe, red bags and waste removal, Instructors and their expenses.

Arrow International, Inc.

Signature: Dan Smith
Name: Dan Smith
Title: Sr. Director, Clinical Affairs
Date: 11-Apr-2019

Provider

Signature: Greg Cliburn
Name: Greg Cliburn
Title: Assistant Chief
Date: 04/19/2019

SCHEDULE B

Company Provided Specimens

Provider agrees that Arrow International will arrange for a third party, Medical Education Research Institute, to provide Specimens for Arrow International, Inc. Programs ("Procurer") and that Procurer's personnel will be permitted entry to Facility at a mutually agreed upon dates and times for the purpose of delivery, set-up, preparation, removal, clean-up/disinfection and otherwise to effectuate the scheduled Program. Specimens shall at all times remain in the possession and control of Medical Education Research Institute and its personnel, or authorized employee of the Company, present at Facility. All Specimen orders will be handled by Arrow International, Inc. Provider is not responsible for ordering Specimens on behalf of Company.

Provider agrees to:

- (a) Maintain as confidential all personal and medical information relating to the Specimens and their donors as come into Provider's possession, except as necessary to ensure the safety of individuals that come in contact with the Specimens.
- (b) Provide a secure location for storage of Specimens during the conduct of the Program, if requested by Company or the Procurer.
- (c) After completion of each Company Program, permit the Procurer, at times agreed to by Provider and Company at the time of scheduling a Program, to arrange for disposition of the Specimens in accordance with all applicable laws and in accordance with the informed consent given by the donor and/or the donor's legally authorized representative.

The Parties shall treat the Specimens with dignity and respect.

SCHEDULE C

Provider Provided Specimens

Provider shall provide, or arrange for the provision of, Specimens to be used by Company during the Programs, subject to the fees, if any, set forth on the Schedule. All Specimens provided by Provider shall at all times remain the property of Provider and shall remain under Provider's control. Company's use of Specimens provided by Provider shall be only for educational or scientific purposes, and shall be limited to only those educational or scientific procedures approved in writing by Provider prior to the date of the Program. Company's use of Specimens shall at all times be subject to Provider's supervision. Provider will handle all human specimen material and perform all clean- up/disposal of human material. Only Specimens with negative test results for Hepatitis B and C and Human Immunodeficiency Virus ("HIV") will be used in Programs. De-identified test results for Specimens to be used in Programs will be provided to Company upon request.

All Specimens provided by Provider to Company shall be obtained (i) with the appropriate Informed consent of donor or donor's next-of-kin, and (ii) in compliance with the Uniform Anatomical Gift Act (the "UAGA") and all other local, state and federal laws and regulations governing the recovery and distribution of anatomical specimens. Provider will maintain approved protocols, and consent forms for all donors.

The Parties shall treat the Specimens with dignity and respect.