

invoice submitted by Exo, County shall notify Exo no later than twenty-one (21) days after the date County receives the invoice. If County does not dispute the invoice, then County shall pay each such approved invoice within thirty (30) calendar days. It is specifically understood and agreed that in the event no funds or insufficient funds are appropriated by Fort Bend County under this Agreement, Fort Bend County shall notify all necessary parties that this Agreement shall thereafter terminate and be null and void on the last day of the fiscal period for which appropriations were made without penalty, liability or expense to Fort Bend County. County is a body corporate and politic under the laws of the State of Texas and claims exemption from sales and use taxes. A copy of a tax-exempt certificate will be furnished upon request. Interest resulting from late payments by County shall be governed by Chapter 2251, TEXAS GOVERNMENT CODE.

4. **Limit of Appropriation.** Exo clearly understands and agrees, such understanding and agreement being of the absolute essence of this Agreement, that County shall have available the total maximum sum of One Hundred Forty-Five Thousand, Five Hundred dollars and 00/100 (\$145,500.00), specifically allocated to fully discharge any and all liabilities County may incur. Exo does further understand and agree, said understanding and agreement also being of the absolute essence of this Agreement, that the total maximum compensation that Exo may become entitled to and the total maximum sum that County may become liable to pay to Exo shall not under any conditions, circumstances, or interpretations thereof exceed One Hundred Forty-Five Thousand, Five Hundred dollars and 00/100 (\$145,500.00). In no event will the amount paid by the County for all Goods under this Agreement exceed this Limit of Appropriation without an amendment executed by the parties.

5. **Public Information Act and Open Meetings Act.** Exo expressly acknowledges that County is subject to the Texas Public Information Act, TEX. GOV'T CODE ANN. §§ 552.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will make any information related to the Agreement, or otherwise, available to third parties in accordance with the Texas Public Information Act. Any proprietary or confidential information marked as such provided to County by Exo shall not be disclosed to any third party, except as directed by the Texas Attorney General in response to a request for such under the Texas Public Information Act, which provides for notice to the owner of such marked information and the opportunity for the owner of such information to notify the Attorney General of the reasons why such information should not be disclosed. The terms and conditions of the Agreement and this Addendum are not proprietary or confidential information.

Exo expressly acknowledges that County is subject to the Texas Open Meetings Act, TEX. GOV'T CODE ANN. §§ 551.001 *et seq.*, as amended, and notwithstanding any provision in the Agreement to the contrary, County will comply with the provisions of the Texas Open Meetings Act in relation to the Agreement.

6. **Indemnity.** The parties agree that under the Constitution and laws of the State of Texas, County cannot enter into an agreement whereby County agrees to indemnify or hold harmless another party; therefore, all references of any kind to County defending,

indemnifying, holding or saving harmless Exo for any reason are hereby deleted. Exo shall indemnify and defend County against all losses, liabilities, claims, causes of action, and other expenses, including reasonable attorney's fees, arising from activities of Exo, its agents, servants or employees, performed under this agreement that result from the negligent act, error, or omission of Exo or any of Exo's agents, servants or employees.

7. **Applicable Law; Arbitration; Attorney Fees.** The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Fort Bend County, Texas, for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in the Agreement shall be construed to waive the County's sovereign immunity. County does not agree to submit disputes arising out of the Agreement to binding arbitration. Therefore, any references to binding arbitration or the waiver of a right to litigate a dispute are hereby deleted. County does not agree to pay any and/or all attorney fees incurred by Exo in any way associated with the Agreement.

8. **Certain State Law Requirements for Contracts.** The contents of this Section are required by Texas Law and are included by County regardless of content. For purposes of Sections 2252.152, 2271.002, and 2274.002, Texas Government Code, as amended, Exo hereby verifies that Exo and any parent company, wholly owned subsidiary, majority-owned subsidiary, and affiliate:
 - a. Unless affirmatively declared by the United States government to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization, is not identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 806.051, 807.051, or 2252.153 of the Texas Government Code.
 - b. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Exo does not boycott Israel and is authorized to agree in such contracts not to boycott Israel during the term of such contracts. "Boycott Israel" has the meaning provided in § 808.001 of the Texas Government Code.
 - c. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Exo does not boycott energy companies and is authorized to agree in such contracts not to boycott energy companies during the term of such contracts. "Boycott energy company" has the meaning provided in § 809.001 of the Texas Government Code.
 - d. If employing ten (10) or more full-time employees and this Agreement has a value of \$100,000.00 or more, Exo does not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and is authorized to agree in such contracts not to discriminate against a firearm entity or firearm trade association during the term of such contracts. "Discriminate against a firearm entity or firearm trade association" has the meaning provided in § 2274.001(3) of the Texas Government Code. "Firearm entity" and "firearm trade association" have the meanings provided in § 2274.001(6) and (7) of the Texas Government Code.

9. **Modifications and Waivers.** The parties may not amend or waive this Agreement, except by a written agreement executed by both parties. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy, or condition. The rights and remedies of the parties set forth in this Agreement are not exclusive of, but are cumulative to, any rights or remedies now or subsequently existing at law, in equity, or by statute.

10. **Human Trafficking.** BY ACCEPTANCE OF CONTRACT, EXO ACKNOWLEDGES THAT FORT BEND COUNTY IS OPPOSED TO HUMAN TRAFFICKING AND THAT NO COUNTY FUNDS WILL BE USED IN SUPPORT OF GOODS OR ACTIVITIES THAT VIOLATE HUMAN TRAFFICKING LAWS.

11. **Use of Customer Name.** Exo may use County's name without County's prior written consent only in any of Exo's customer lists, any other use must be approved in advance by County.

12. **Product Assurance.** Exo represents and warrants that its hardware, software and any related systems and/or Goods related to its software and/or hardware (collectively, the "Product") furnished by Exo to County will not infringe upon or violate any patent, copyright, trademark, trade secret, or any other proprietary right of any third party. Exo will, at its expense, defend any suit brought against County and will indemnify County against an award of damages and costs (including reasonable attorney fees, court costs and appeals), made against County by settlement or final judgment of a court that is based on a claim that the use of Exo's Product infringes an intellectual property right of a third party. Such defense and indemnity shall survive termination or expiration of the Agreement and Exo's liability for the above is not limited by any limitation of liability clauses that may appear in any document executed by the parties.

13. **Performance Warranty.** Exo warrants to County that Exo has the skill and knowledge ordinarily possessed by well-informed members of its trade or profession practicing in the greater Houston metropolitan area and Exo will apply that skill and knowledge with care and diligence to ensure that the Goods provided hereunder will be performed and delivered in accordance with the highest professional standards.

Exo warrants to County that the Goods will be free from material errors and will materially conform to all requirements and specifications contained in the attached Exhibits.

14. **Grant Funding.** Exo understands that and acknowledges that this agreement may be totally or partially funded with federal funds. Exo represents and warrants that it is and will remain in compliance with all applicable federal provisions, including those attached as Exhibit C attached hereto and incorporated herein for all purposes.

15. **Conflict.** In the event there is a conflict between this Addendum and the Agreement, this Addendum controls to the extent of the conflict.

16. **Understanding, Fair Construction.** By execution of this Addendum, the parties acknowledge that they have read and understood each provision, term and obligation contained in this Addendum. This Addendum, although drawn by one party, shall be construed fairly and reasonably and not more strictly against the drafting party than the nondrafting party.
17. **Captions.** The section captions used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
18. **Electronic and Digital Signatures.** The parties to this Agreement agree that any electronic and/or digital signatures of the parties included in this Agreement are intended to authenticate this writing and to have the same force and effect as the use of manual signatures.
19. **County Data.** Nothing in this Agreement will be construed to waive the requirements of § 205.009 of the Texas Local Government Code. Nothing in this Agreement will be construed to waive the requirements of any record retention laws applicable to County.
20. **Compliance with Laws.** Exo shall comply with all federal, state, and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals in any matter affecting the performance of this Agreement, including, without limitation, Worker's Compensation laws, minimum and maximum salary and wage statutes and regulations, licensing laws and regulations. When required by County, Exo shall furnish County with certification of compliance with said laws, statutes, ordinances, rules, regulations, orders, and decrees above specified.
21. **Confidential Information.** Exo acknowledges that it and its employees or agents may, in the course of performing their responsibilities under this Agreement, be exposed to or acquire information that is confidential to County. Any and all information of any form obtained by Exo or its employees or agents from County in the performance of this Agreement shall be deemed to be confidential information of County ("Confidential Information"). Any reports or other documents or items (including software) that result from the use of the Confidential Information by Exo shall be treated with respect to confidentiality in the same manner as the Confidential Information. Confidential Information shall be deemed not to include information that (a) is or becomes (other than by disclosure by Exo) publicly known or is contained in a publicly available document; (b) is rightfully in Exo's possession without the obligation of nondisclosure prior to the time of its disclosure under this Agreement; or (c) is independently developed by employees or agents of Exo who can be shown to have had no access to the Confidential Information.

Exo agrees to hold Confidential Information in strict confidence, using at least the same degree of care that Exo uses in maintaining the confidentiality of its own confidential information, and not to copy, reproduce, sell, assign, license, market, transfer or otherwise dispose of, give, or disclose Confidential Information to third parties or use Confidential Information for any purposes whatsoever other than the provision of Goods to County hereunder, and to advise each of its employees and agents of their obligations to keep

Confidential Information confidential. Exo shall use its best efforts to assist County in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limitation of the foregoing, Exo shall advise County immediately in the event Exo learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement and Exo will at its expense cooperate with County in seeking injunctive or other equitable relief in the name of County or Exo against any such person. Exo agrees that, except as directed by County, Exo will not at any time during or after the term of this Agreement disclose, directly or indirectly, any Confidential Information to any person, and that upon termination of this Agreement or at County's request, Exo will promptly turn over to County all documents, papers, and other matter in Exo's possession which embody Confidential Information.

Exo acknowledges that a breach of this Section, including disclosure of any Confidential Information, or disclosure of other information that, at law or in equity, ought to remain confidential, will give rise to irreparable injury to County that is inadequately compensable in damages. Accordingly, County may seek and obtain injunctive relief against the breach or threatened breach of the foregoing undertakings, in addition to any other legal remedies that may be available. Exo acknowledges and agrees that the covenants contained herein are necessary for the protection of the legitimate business interest of County and are reasonable in scope and content.

Exo in providing all Goods hereunder agrees to abide by the provisions of any applicable Federal or State Data Privacy Act.

22. **Independent Contractor.** In the performance of work or Goods hereunder, Exo shall be deemed an independent contractor, and any of its agents, employees, officers, or volunteers performing work required hereunder shall be deemed solely as employees of Exo or, where permitted, of its subcontractors. Exo and its agents, employees, officers, or volunteers shall not, by performing work pursuant to this Agreement, be deemed to be employees, agents, or servants of County and shall not be entitled to any of the privileges or benefits of County employment.
23. **Severability.** If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.
24. **Insurance.**
 - A. Prior to commencement of the Goods, Exo shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Exo shall provide certified copies of insurance endorsements and/or policies if requested by County. Exo shall maintain such insurance coverage from the time Goods commence until Goods are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Goods. Exo shall obtain such

insurance written on an Occurrence form from such companies having Bests rating of A/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits:

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers' Compensation Insurance will not be allowed.
 2. Employers' Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
 3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
 4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
- B. County and the members of Commissioners Court shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability (if required). All Liability policies written on behalf of Exo shall contain a waiver of subrogation in favor of County and members of Commissioners Court. For Commercial General Liability, the County shall be named as an Additional Insured on a Primary & Non-Contributory basis.
- C. If required coverage is written on a claims-made basis, Exo warrants that any retroactive date applicable to coverage under the policy precedes the effective date of the Contract and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time the work under this Contract is completed.
- D. Exo shall not commence any portion of the work under this Contract until it has obtained the insurance required herein and certificates of such insurance have been filed with and approved by Fort Bend County.
- E. No cancellation of or changes to the certificates, or the policies, may be made without thirty (30) days prior, written notification to Fort Bend County.
- F. Approval of the insurance by Fort Bend County shall not relieve or decrease the liability of Exo.

IN WITNESS WHEREOF, this Addendum is signed, accepted, and agreed to by all parties by and through the parties or their agents or authorized representatives. All parties hereby acknowledge that they have read and understood this Addendum and the attachments and exhibits hereto. All parties further acknowledge that they have executed this legal document voluntarily and of their own free will. This Addendum is effective upon execution by both parties.

FORT BEND COUNTY

KP George, County Judge

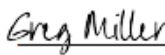
Date

ATTEST:

Laura Richard, County Clerk

EXO IMAGING, INC.

Signed by:



Authorized Agent – Signature

Greg Miller

Authorized Agent- Printed Name

VP Sales

Title

10/16/2024

Date

AUDITOR'S CERTIFICATE

I hereby certify that funds in the amount of \$ 145,500.00 are available to pay the obligation of Fort Bend County within the foregoing Agreement.

Robert Ed Sturdivant, County Auditor

Exhibit A: Exo's Quote, dated October 4, 2024;

Exhibit B: Exo's Sole Source Letter; and

Exhibit C: Federal Clauses

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Exhibit A



Quote

Exo Imaging, Inc.
4201 Burton Drive
Santa Clara, CA 95054, USA

October 04, 2024

QT-863v3

Expiration Date: December 03, 2024

Sold To: Ft. Bend County EMS
5855 Sienna Springs Way
Missouri City, TX 77459 United States

Ship To: Ft. Bend County EMS
5855 Sienna Springs Way
Missouri City, TX 77459 United States

This Quote is issued pursuant to Exo Imaging, Inc.'s Terms and Conditions of Use in effect as of the date of this Quote, a copy of which is attached hereto ("Terms and Conditions"). Your signature to this Quote constitutes a confirmation of this Quote ("Order Confirmation"), and your acceptance of the Terms and Conditions as of the date of your signature.

Terms of Delivery

Billing Terms

Payment Terms

Subscription Term

Year 1 Cost

Tax Exempt (Certificate required)

FOB Shipping Point, Freight Prepaid

See Fee Schedule

Net 30

3 Year

\$145,500.00

Yes, check box if applicable

I am a physician or other practitioner in good standing and licensed by the law of the State in which I practice to use or order the use of the device, or I am purchasing the device pursuant to a valid prescription or order from such a physician or practitioner for use in professional practice as authorized by law.

Please have an authorized representative of Ft. Bend County EMS sign below to accept the terms of this Quote and the attached Terms and Conditions.

<p>Ft. Bend County EMS</p> <p>Signature: <u>Rita Graeber</u></p> <p>Print Name: <u>Rita Graeber</u></p> <p>Title: <u>Deputy Chief</u></p> <p>Date: <u>10/16/2024</u></p>	<p>Exo Imaging, Inc.</p> <p>Signed by:</p> <p>Signature: <u>Greg Miller</u></p> <p>Date: <u>10/16/2024</u></p> <p>Rob Leach Greg Miller Sales Executive VP Sales rleach@exo.inc gmiller@exo.inc</p>
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Quote

Exo Imaging, Inc.
 4201 Burton Drive
 Santa Clara, CA 95054, USA

October 04, 2024

QT-863v3

Expiration Date: December 03, 2024

Product	Description	Qty	Unit Net Price	Billing Frequency	Price Per Invoice	Total Annual Price
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YEAR 1

PS0101: Professional Services	One hour of Professional Services from Exo	8	0.00	One Time	0.00	0.00
EI0104: Exo Iris™ Ultrasound System - Connect 3 Year	Exo Iris Ultrasound System includes a duo cable, wireless charger, wall charger, gel, and one year of standard warranty (1 of EI0100) and two-years of extended warranty (1 of SV0102). Includes Exo Works Connect centralize all your point-of-care ultrasound imaging in one place to scan, document, review, collaborate, store and manage quality assurance and proficiency tracking for credentialing. (3 of EW0102). This is a three-year subscription for a single software license per Exo Iris ultrasound system and includes: - 3-in-1 imaging - Real-time AI: bladder, core cardiac and lung - Documenting and reporting - DICOM, PACS, VNA and Worklist integration - Secure archiving and sharing - Integrating any DICOM-enabled ultrasound - QA and proficiency tracking	30	4,850.00	One Time	145,500.00	145,500.00

Year 1 Cost **\$145,500.00**

Total Cost **\$145,500.00**

Tax, if applicable, will be billed at time of invoice.



Quote

Exo Imaging, Inc.
4201 Burton Drive
Santa Clara, CA 95054, USA

October 04, 2024

QT-863v3

Expiration Date: December 03, 2024

EXO IMAGING, INC. ("EXO") TERMS AND CONDITIONS OF USE

PLEASE READ CAREFULLY THESE TERMS AND CONDITIONS OF USE ("AGREEMENT"). THIS AGREEMENT CONTAINS ALL OF YOUR RIGHTS AND OBLIGATIONS AS A CUSTOMER AND USER OF EXO PRODUCTS AS DEFINED HEREIN.

THIS AGREEMENT IS IN LIEU OF AND REPLACES ANY AND ALL TERMS AND CONDITIONS SET FORTH IN ANY DOCUMENTS ISSUED BY THE CUSTOMER, INCLUDING, WITHOUT LIMITATION, PURCHASE ORDERS AND SPECIFICATIONS. ANY ADDITIONAL, DIFFERENT, OR CONFLICTING TERMS AND CONDITIONS ON ANY SUCH DOCUMENT ISSUED BY CUSTOMER AT ANY TIME ARE HEREBY OBJECTED TO BY EXO, AND ANY SUCH DOCUMENT SHALL BE WHOLLY INAPPLICABLE TO ANY SALE MADE HEREUNDER AND SHALL NOT BE BINDING IN ANY WAY ON EXO.

For purposes of this Agreement, Exo Imaging, Inc., will be referred to as "Exo" and you, or the entity on whose behalf you are acting, will be referred to as "Customer" or "You." Exo and Customer may be referred to individually as a "Party," and collectively as "Parties."

RECITALS

- A.** Exo provides portable ultrasound imaging probes ("**Exo Devices**") and workflow software, including web-based services made available by Exo on a subscription basis ("**Exo Works Subscription Services**") (separately, an "**Exo Product**," collectively, "**Exo Products**") for viewing, analyzing, archiving, and billing ultrasound images for various medical diagnostic purposes. Exo is not a medical or other health care provider.
- B.** Customer is a licensed physician or other medical practitioner in good standing and trained to use ultrasound or is purchasing on behalf of a licensed physician or medical practitioner in good standing who is trained to use ultrasound.
- C.** Exo desires to sell Exo Devices and provide Exo Works Subscription Services to Customer and Customer desires to purchase such Exo Devices and/or subscribe to Exo Works Subscription Services.
- D.** In consideration of the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. Exo Devices (If Applicable)

- a.** Exo's ultrasound imaging probes ("**Exo Devices**") are used by Customer and Customer-authorized, ultrasound imaging-qualified end users ("**End Users**") to conduct ultrasound imaging and, when connected to a Customer- or an End User-supplied display device (such as smartphone or tablet), enables the ability to view and process an ultrasound image. Access and use of Exo Devices is restricted to Customer and its designated End Users only.



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b. Unless otherwise specified, Exo will package and pack all Exo Devices in a manner that is (i) in accordance with good commercial practice and (ii) acceptable to common carriers for shipment for the particular goods. Shipping dates, delivery dates, and Exo Device quantity availability as described on the Order Confirmation or any other document are estimates only and are based upon prompt receipt from Customer of all necessary information. Exo is not liable for any failure to deliver where or when estimated. If, for whatever reason, Exo experiences shortages of its Exo Devices, it may allocate Exo Devices among its customers at its discretion. Unless otherwise agreed in writing by the Parties, all sales are made FOB Shipping Point, Freight Prepaid. Exo will use reasonable discretion for selection of shipment mode but will consider Customer's request for shipping mode in good faith, including any related change in pricing due to Customer's desired shipment mode. Claims against Exo for shortages shall be deemed waived if not made within five business days after receipt of the shipment.

c. No orders may be canceled or modified in any way without Exo's prior written consent to each cancellation or change. Customer shall be deemed to accept the Exo Devices upon receipt unless it notifies Exo in writing of any Nonconforming Products (as defined below) within five (5) business days of receipt and furnishes such written evidence or other documentation as reasonably required by Exo. "**Nonconforming Product**" means that the Exo Device shipped is different than identified on the Order Confirmation. No delivered Exo Device may be returned by Customer for any or no reason without the prior written approval of Exo. All returns shall be in the original packaging or equivalent. Any Exo Device returned to Exo without prior authorization for its return or proper packaging may be refused. If Customer timely notifies Exo of and timely returns a Nonconforming Product, Exo shall, in its sole discretion, (i) replace such Nonconforming Product with a conforming Exo Device, or (ii) credit or refund the price for such Nonconforming Product, together with any reasonable shipping and handling expenses incurred by Customer in connection therewith. If Exo elects to replace the Nonconforming Product, the replacement will be shipped FOB Shipping Point, Freight Prepaid. Customer acknowledges and agrees that the remedies set forth in this Section are Customer's exclusive remedies for the delivery of Nonconforming Products.

2. Exo Software and Subscription Services

a. Exo Device Embedded Software

i. Any software (including firmware) included or embedded in, or provided in connection with, an Exo Device, is subject to license and not sale. All such software is protected by copyright law and international treaty provisions, and all right, title, and interest in or to such software are expressly reserved to Exo and its licensors. Subject to Customer's ongoing compliance with the terms and conditions of this Agreement (including timely payment of all applicable fees), Exo grants to Customer a non-exclusive, non-transferable license to use such software solely in the authorized operation of the Exo Device and in accordance with the documentation applicable to the Exo Device for which it is provided.

ii. Customer may not (and may not permit anyone else to) (i) remove or use such software separately from the Exo Device in which it is embedded or for which it is provided; or (ii) port, reverse compile, decompile, disassemble, or reverse engineer such software. All proprietary notices incorporated in or affixed to the software shall be retained by Customer on all copies thereof and shall not be altered, removed, or obliterated.

b. Exo Works Subscription Services

i. Customer acknowledges that the use of all features of Exo Devices requires access and use of Exo's web-based services made available by Exo on a subscription basis ("**Exo Works Subscription Services**"). Exo Works Subscription Services are also available as a standalone, web-based service made available by Exo on a subscription basis for use in conjunction with images collected by third-party ultrasound imaging probes.

ii. Exo Works Subscription Services are subject to license and not sale. Exo Works Subscription Services are protected by copyright law and international treaty provisions, and all right, title, and interest in or to such Exo Works Subscription Services are expressly reserved to Exo and its licensors. Subject to Customer's ongoing compliance with the terms and conditions of this Agreement (including timely payment of all applicable fees), Exo grants Customer a non-exclusive, non-transferable right during the subscription term set forth on the Order Confirmation ("**Subscription Term**") to access and use the Exo Works Subscription Services set forth on the Order Confirmation.



Quote

October 04, 2024

QT-863v3

Expiration Date: December 03, 2024

Exo Imaging, Inc.
4201 Burton Drive
Santa Clara, CA 95054, USA

- iii. Customer acknowledges and agrees that Customer utilization of Exo Works Subscription Services licenses exceeding that provided for in an Order Confirmation shall incur additional pro-rata license fees payable to Exo subject further to the terms set forth in Section 3 (Prices and Taxes) and Section 4 (Payment and Remedies).
- iv. Customer acknowledges and agrees that Customer shall have no access to the Exo Works Subscription Services following the Subscription Term, except for limited access provided for a period of thirty (30) days to Customer's designated administrative end users solely for purposes of permitting Customer to retrieve any of its data or images stored on the Exo Works Subscription Services. Such limited access will be provided to Customer contingent on Customer's timely written request to Exo technical support. Customer understands that Exo may irrevocably delete any such data or images after the end of such thirty (30) days period.
- v. Customer shall not, directly or indirectly, and shall not authorize any person, to the maximum extent permitted by applicable law, to decompile, disassemble, reverse engineer, or attempt to reconstruct or discover any elements of; translate, adapt, or modify; sell, sublicense, transfer any rights in, use for the benefit of, or allow access to, unauthorized persons to; transmit unlawful, infringing or harmful data or code to or from; or otherwise use except as expressly permitted hereunder; the Exo Works Subscription Services (including without limitation all technology constituting or used to provide the Exo Works Subscription Services).
- vi. Except for the services set forth on the Order Confirmation, Exo is not responsible for and Customer agrees that it has no expectation of receiving, any training, implementation, integration, or similar product-related services, unless the Parties have agreed otherwise in a separate written agreement.
- vii. If the Parties have entered into a separate support agreement with respect to the provision of technical support by Exo, then that agreement shall apply. If no such agreement has been entered into, then Exo agrees to respond to Customer's basic technical support inquiries via email or phone (but not onsite support) and provide Customer reasonable technical support, maintenance, and generally available updates.
- viii. Exo reserves the right to modify or delete any features of the Exo Works Subscription Services in any manner, without advance notice to the Customer, that does not have an adverse impact on the Exo Works Subscription Service or may be necessary to meet any applicable legal, regulatory, or industry-standard requirements or demands. Exo shall employ best efforts to notify Customer as soon as practicable in advance of changes to the Exo Works Subscription Services that have an adverse impact on the Exo Works Subscription Services.
- ix. **(For Exo Works Enterprise Version Only):** Certain Exo Works Subscription Services, including Exo Works Enterprise, may be utilized independently of Exo Devices. With respect to Exo Works Enterprise, the following additional terms and conditions shall apply. In the event of a conflict between this subsection and any other subsection in this Agreement, this subsection shall apply: (i) Exo will deliver all Exo Works Enterprise software, documentation, and updates to Customer by electronic transfer or download; (ii) Exo will provide Exo Works Subscription Services Availability as defined and more fully set forth in Addendum B to this Agreement ("**Service Level Agreement**" or "**SLA**") and Addendum C to this Agreement ("**Terms and Conditions for Maintenance**"); (iii) Exo Works Subscription Services Availability will be provided in a professional manner by qualified personnel and having the certifications, skills, and qualifications necessary to perform such services in a timely, competent, and professional manner and in accordance generally accepted industry standards.
- x. **(For Exo Works Installation Services):** Unless otherwise expressly provided in an Order Confirmation, Exo is not required to connect Exo Devices or Exo Works Subscription Services to any part of Customer's computer system, migrate any Customer data or install any Customer software (whether or not provided by Exo). Exo Works Enterprise installation and integration services (including but not limited to configuration and customization, but excluding Maintenance) ("**Installation Services**"), as provided optionally by Exo, shall be included as a separate item in the relevant Order Confirmation and may be invoiced separately from other Order Confirmation items. Customer shall (i) communicate all matters material to Installation Services to Exo's designated contact person; (ii) together with Exo, schedule the performance of Installation Services during mutually agreed upon times during normal business hours; (iii) provide qualified, knowledgeable personnel who will perform Customer obligations hereunder and under the applicable Order Confirmation, make timely decisions necessary to perform the Installation Services, participate in the project to the extent reasonably requested by Exo and reasonably assist Exo with its performance of the Installation Services; (iv) provide timely responses to Exo's inquiries and requests for approvals and authorizations; (v) provide access to any information or materials reasonably requested by Exo that are necessary or useful as determined by Exo in connection with providing the Installation Services, including, but not limited to, physical and computer access to Customer's computer systems; (vi) perform other reasonable duties and tasks to facilitate Exo's performance of the Installation Services; (vii) provide adequate workspace for engagement personnel (both Exo's and Customer's) with appropriate system access; (viii) acquire all necessary hardware and software (free of defects, data corruption or malicious code) required to complete the Installation Services, at Customer's sole expense; and (ix) backup and secure any critical data before commencement of Installation Services (Exo is not responsible for backing up any Customer data prior to or during Installation Services). If Customer does not fulfill the foregoing responsibilities in this subsection, then any of the following may apply: (i) the anticipated schedule for completion of Installation Services may be delayed, the amount of time it takes to perform Installation Services may increase, and/or Exo may need to perform additional or different



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services in order to be able to perform the original Installation Services, in which case, Exo may invoice Customer for any such additional or different time or performance; (ii) it may be commercially unreasonable for Exo to perform the Installation Services, either in whole or in part, in which case Exo shall have the right to terminate any obligation it may have to Customer or to terminate an Order Confirmation upon written notice to Customer. Exo's Installation Services shall not extend to developing any Customer-specific software or software interfaces that may be necessary to complete the Installation Services, and Exo shall not be responsible for reviewing or cleansing any Customer data for any data errors or corruption that exist already in the data provided to Exo by the Customer. In the event of a conflict between this subsection and any other subsection in this Agreement, this subsection shall apply.

3. Prices and Taxes

a. Except as otherwise specified by Exo in writing, prices for Exo Devices sold and Exo Works Subscription Services provided will be as set forth on the Order Confirmation document (unless Customer utilization of Exo Works Subscription Services licenses exceeds that provided for in an Order Confirmation, in which case Customer shall be subject to an additional pro-rata license utilization fee without further Order Confirmation modification), or, if no such prices are set forth on the Order Confirmation then as set forth in the last written quotation signed by Exo and provided to Customer. Listed prices may include, without limitation, one-time amounts (such as purchase price of Exo Device(s) and fees for Installation Services (if applicable)), as well as recurring fees (including, without limitation, for subscription to Exo Works Subscription Services). All recurring amounts listed are for the current Subscription Term, and Exo reserves the right to increase fees for subsequent periods. Unless otherwise stated on the face hereof, stated prices do not include any customs duties, sales, use, value-added, excise, goods and services, federal, state, local or other similar taxes. All such duties or taxes shall be paid by Customer, or, in lieu thereof, Customer shall provide Exo with an appropriate exemption certificate.

b. Customer is solely responsible for securing, at its own cost, all hardware and all internet access and connectivity required to access and use Exo Devices and Exo Works Subscription Services (including costs relating to transmitting data and images to and from Exo Works Subscription Services). The prices listed on Exo's quotation or Order Confirmation do not include costs of obtaining and maintaining internet access and connectivity.

4. Payment and Remedies

a. Unless otherwise stated on the Order Confirmation, ALL PAYMENTS SHALL BE MADE IN UNITED STATES DOLLARS WITHIN THIRTY (30) DAYS OF THE DATE OF INVOICE. Notwithstanding the foregoing, if in Exo's judgment, the financial condition of Customer does not justify production or shipment of Exo Devices or continued access to Exo Works Subscription Services on the foregoing terms of payment, Exo may require full or partial payment in advance. Exo reserves the right to subject all shipments and provision of services hereunder to credit approval or review by Exo. Customer shall provide such credit information, references, and assurances as are requested by Exo at any time. Any amounts not paid when due shall accrue interest at the rate of 2% per month, or the highest rate allowed by applicable law, whichever is lower. Customer agrees to pay all costs of collection, including costs of litigation and reasonable attorneys' fees.

b. Invoices for Exo Works Enterprise Subscription Services subscription fees shall not be issued to Customer unless and until at least one of the following preconditions is met: (i) Customer exam data (test or clinical) workflow has been completed and transferred into Customer's PACS system; or (ii) an educational or quality assurance workflow is completed. Invoices for Exo Works Essential Subscription Services subscription fees shall be issued to Customer upon Exo Device delivery to Customer. Customer acknowledges and agrees that Exo may remove Customer's access to Exo Works Subscription Services in the event any amounts are not paid when due (except that in such event, Exo will continue to provide limited access to Exo Works Subscription Services for thirty (30) days solely for purposes of permitting Customer to retrieve any of its data or images stored on Exo Works Subscription Services).

c. Exo may accept partial payment in an amount less than the full amount of any invoice, but such acceptance shall not constitute a waiver of Exo's right to collect the balance or accord and satisfaction notwithstanding Exo's endorsement of a check or other instrument. If Customer has a good faith dispute regarding payment for a particular Exo Device or Exo Works Subscription Services, such dispute shall not entitle Customer to withhold payment to Exo for any other Exo Device or portion of Exo Works Subscription Services.



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d. Each individual shipment may be invoiced and paid as a separate and independent transaction. Exo reserves a purchase money security interest in Exo Devices sold to Customer, and in the proceeds thereof, until payment is made in full by Customer, which security interest constitutes a purchase money security interest under the California Uniform Commercial Code. Customer will pay all invoiced amounts in full, without any set-off against any amounts allegedly owed by Exo or any of its affiliated companies to Exo.

e. If Customer fails to pay any sum when due (including for Customer utilization of Exo Works Subscription Services licenses exceeding that provided for in an Order Confirmation), fails to accept any delivery of conforming Exo Device, returns an Exo Device without advance authorization of Exo, or otherwise fails to abide by this Agreement's terms and conditions, in addition to any other remedies allowed by law, Exo may suspend Exo Works Subscription Services while Customer is in breach, or cancel all further deliveries, and Customer shall remain liable for the amounts due, including without limitation the stated price of the Exo Device(s) not accepted or returned without authorization.

f. The dollar value of the discounts or other reductions in price pursuant to this Agreement, if any, and any other items and services not paid for by Customer and received by Customer under this Agreement are "discounts and other reductions in price" under Section 1128B(b)(3)(A) of the Social Security Act (42 U.S.C. § 1320-a-7b(3)(A)), as amended. It is the intent of the Parties to comply with the Anti-Kickback Law Discount Safe Harbor (42 C.F.R. § 1001.952(h) as amended). The Discount Safe Harbor requires that certain discounts be reported and or passed on to Federal and State health care programs, such as Medicare and Medicaid. Customer understands and agrees it must properly disclose the discounts or reductions in price, and reflect such discounts or reductions in price in the costs claimed or charges made under any Federal or State health care program which provides cost or charge-based reimbursement to Customer for the items and services covered by this Agreement. Customer shall be solely responsible for determining whether the savings or discounts it receives must be reported or passed on to payors.

5. Ownership and Reservation of IP Rights

a. Exo owns all right, title, and interest in and to:

i. the Exo Works Subscription Services and the technology, software, firmware, hardware, products, processes, algorithms, user interfaces, documentation, user manuals, and know-how related to the Exo Works Subscription Services and Exo Devices;

ii. any data and content generated through the use or execution of the Exo Works Subscription Services or any software (including firmware) included or embedded in, or provided in connection with, an Exo Device to the extent such data or content does not include Protected Health Information ("PHI") as that term is defined in HIPAA;

iii. any and all Exo Confidential Information (as defined below);

iv. Anonymized Data (as defined in Addendum A (Data Privacy and Processing));

v. the Exo Devices, subject to Subsection 5(e) (Customer Property), and the technology, software, firmware, hardware, products, processes, algorithms, user interfaces, documentation, user manuals, and know-how related to the Exo Devices; and; any and all Intellectual Property Rights (as defined herein) embodied in this Section 5(a)(i)-(v) (collectively, "**Exo Property**"). "**Intellectual Property Rights**" shall mean patents, inventions, utility models, trademarks, service marks, trade and service names, copyrights, database rights, and design rights (whether or not any of them are registered, and including applications for registration of any of them), rights in know-how, moral rights, trade secrets and rights of confidence and all rights or forms of protection of a similar nature or having similar or equivalent effect to any of them which may exist anywhere in the world.

b. Exo shall own any and all developments, inventions, and work product created under any Exo-furnished professional services, including but not limited to training materials, implementation guides, and customizations of Exo Works Subscription Services.

c. Exo shall have, and Customer hereby grants, a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use or incorporate into the Exo Works Subscription Services and Exo Devices any suggestions, enhancement requests, recommendations, or other feedback provided by Customers and End Users relating to the Exo Works Subscription Services and Exo Devices.



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d. Customer shall not use any trade name, trademark, service mark, logo, commercial symbol, or any other proprietary rights of Exo in any manner without Exo's prior written authorization. Exo may use Customer's name and logo on the Exo website and in Exo's collateral marketing materials, provided that Customer has approved the form of any such use in writing, such approval not to be unreasonably withheld.

e. Customer retains ownership of all data and images it transmits to the Exo Works Subscription Services. Following receipt of Exo Devices and payment of the Exo Device fees pursuant to the terms of this Agreement and the applicable Sale Confirmation, Customer owns all right, title, and interest in and to the Exo Devices. Subject to the aforementioned sentence, Customer Data (as defined in Addendum A (Data Privacy and Processing)) and Exo Devices are collectively "**Customer Property**."

f. Except as expressly set forth herein, the sale of an Exo Device or license to Exo Works Subscription Services by Exo does not transfer any of Exo's Intellectual Property Rights or convey any license, expressly or by implication, estoppel or otherwise, to any of Exo's intellectual property. No other title, rights, or licenses to the Exo Device, Exo software, or Exo Works Subscription Services, or any Intellectual Property Rights in, to, or embodied by any of the foregoing are granted under these terms. The rights and licenses granted herein are personal to Customer and are not transferable to any third party without the express written consent of Exo. All rights not expressly granted to Customer herein are expressly reserved by Exo.

6. System Monitoring

a. Exo expressly reserves the right to monitor any and all use of the Exo Works Subscription Services or its software (including firmware) included or embedded in, or provided in connection with, an Exo Device, including certain performance characteristics of Exo Works Subscription Services and Customer utilization of Exo Works Subscription Services licenses. See Exo Privacy Policy for more details.

b. Exo may gather system data for the purpose of optimizing the Exo Works Subscription Services or its software (including firmware) included or embedded in or provided in connection with an Exo Device. This information includes but is not limited to, data regarding memory usage, connection speed, and efficiency, as well as temperature, battery, and other Exo Device characteristics.

c. Exo shall have no obligation to monitor Customer Data but reserves the right to monitor the Exo Works Subscription Services for purposes of verifying compliance with the terms of this Agreement.

7. Customer Responsibilities and Acknowledgements

a. CUSTOMER IS SOLELY RESPONSIBLE FOR ALL ITS (AND ITS END USERS') CLINICAL AND MEDICAL TREATMENT AND DIAGNOSTIC DECISIONS.

b. CUSTOMER IS SOLELY RESPONSIBLE FOR ALL ITS (AND ITS END USERS') DECISIONS TO USE EXO DEVICES, OR EXO WORKS SUBSCRIPTION SERVICES FOR ANY MEDICAL PROCEDURES OR OTHER PURPOSES.

c. Customer is solely responsible for maintaining the Exo Device (including cleaning and disinfecting) in accordance with all written instructions and labeling and implementing safety measures to guard against the possibility of injury or damage in the event of a failure or malfunction of an Exo Device.

d. Customer is solely responsible for securing, at its own cost, all hardware and all internet access and connectivity required to access and use Exo Devices and Exo Works Subscription Services (including costs relating to transmitting data and images to and from Exo Works Subscription Services). Customer shall be solely responsible, and under no circumstances will Exo or any of its licensors or suppliers be responsible, for any loss, damage, or liability arising out of any Customer equipment, including any delays, inaccuracies, errors, malfunctions, battery depletion or battery failure, security failures, or other incident attributable to Customer equipment.

e. Customer is solely responsible for, and under no circumstances will Exo or any of its licensors or suppliers be responsible, for any loss, damage, or liability arising out of any Customer Data, including any mistakes or inaccuracies contained in the Customer Data, the use (or misuse or misappropriation) or subject matter of the Customer Data, or Customer Data while it resides in or is stored on Customer Equipment.

f. Customer is solely responsible for uploading Customer Data for storage in accordance with the Exo documentation and for any loss of Customer Data resulting from Customer's failure to so upload.

g. Customer shall use Exo Products only for clinical diagnostic purposes in the diagnosis or treatment of a disease or condition, and not for any other purposes (including entertainment or recreational purposes).



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- h. Customer agrees and acknowledges that Exo cannot and does not provide medical advice. Exo has not recommended and does not recommend that Exo Products, whether hardware or software, be used for any particular purpose.
- i. Customer agrees and acknowledges that all semiconductor products experience failure rates, which may vary according to use conditions and other circumstances.
- j. Customer further agrees and acknowledges that it will:
 - i. establish and maintain industry-standard technical information and physical and administrative security protocols, including virus protection, for all Customer equipment;
 - ii. prevent unauthorized access to Exo Works Subscription Service and Exo Devices and interception of transmission of Customer Data from the Exo Device to any connected Customer equipment.
- k. Customer shall not, and shall not allow or assist any End User or other entity to:
 - i. use the Exo Device in a manner inconsistent with its labeling;
 - ii. rent, lease, sublicense, assign, distribute, transfer, copy, reproduce, download, display, modify or timeshare or otherwise make Exo Works Subscription Services or any portion thereof available to any third party other than End Users as contemplated by this Agreement and the applicable Order Confirmation;
 - iii. use the Exo Devices or Exo Works Subscription Services to send or store infringing or unlawful material or material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
 - iv. modify, copy or create derivative works based on Exo Products, provided that Customer may print, annotate or export Customer Data, but only to the extent expressly permitted in the Exo documentation and only for purposes of providing medical care to the individual patient associated with such Customer Data;
- v. translate, reverse engineer, decompile, disassemble, or otherwise attempt to discover any source code or underlying ideas of any Exo Products, or modify any Exo Products, except to the extent (but only to such extent) that applicable law prohibits such restrictions;
- vi. access or use Exo Products to develop or create competing products or services or copy any features or user interface of the Exo Works Subscription Services or otherwise use such Exo Works Subscription Services as a component of or a base for products or services prepared for commercial sale, sublicense, lease, access or distribution;
- vii. attempt to repair an Exo Device;
- viii. disable any security devices or codes on an Exo Device or Exo Works Subscription Services;
- ix. alter, remove, or obscure any proprietary rights notices on Exo Products or related documentation;
- x. Use the Exo Works Subscription Services for benchmarking or other comparative analysis intended for publication without Exo's prior written consent.



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8. Warranties and Disclaimers

a. (Standard Warranty) Exo warrants that:

i. for a period of one year from delivery, the delivered Exo Devices will (i) be free from material defects in workmanship, material, and manufacture; (ii) materially conform to Exo's specifications; and (iii) comply with all applicable laws and regulations;

ii. Installation Services provided by Exo under Section 2(b)(ix) shall be performed in a professional and workmanlike manner and shall substantially conform with the description of Installation Services set forth in the applicable Order Confirmation; and

iii. during the Subscription Period (i) the Exo Works Subscription Services and the software embedded in Exo Devices will materially conform to Exo's specifications, and (ii) the Exo Works Subscription Services will be operational as set forth in Addendum B to this Agreement.

b. (Exo Devices Extended Warranty – If Applicable) Exo further warrants that:

i. for a period of two additional years from the expiration of the Standard Warranty, and subject to the exceptions set forth in this Section 8.b., the delivered Exo Devices will (i) be free from material defects in workmanship, material, and manufacture; (ii) materially conform to Exo's specifications; and (iii) comply with all applicable laws and regulations.

ii. Exo Devices Extended Warranty does not apply to any of the following: consumable parts, such as batteries that are designed to diminish over time, unless failure has occurred due to a defect in materials or workmanship; cosmetic damage, including but not limited to scratches, dents and broken plastic on ports unless failure has occurred due to a defect in materials or workmanship; damage caused by use with a third party component or product that does not meet the Exo's specifications; damage caused by accident, abuse, misuse, fire, liquid contact, earthquake or other external cause; damage caused by operating the Exo Device outside Exo's published guidelines; damage caused by service (including repair service) performed by anyone who is not an authorized representative of Exo; an Exo Device that has been modified to alter functionality or capability without the written permission of Exo; defects caused by normal

c. EXCEPT FOR THE FOREGOING WARRANTIES, EXO MAKES NO WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS, OR OTHER WARRANTIES THAT MIGHT ARISE FROM THE COURSE OF DEALING OR CUSTOM OF TRADE.

d. All warranties cover only defects arising under normal use in compliance with Exo's specifications and do not include malfunctions or failures resulting from misuse, abuse, neglect, alteration, modification, or improper installation, repairs by anyone other than Exo, or failure to implement or adhere to Exo's User Manual or fixes for avoiding the defect. All warranties are subject to Customer's timely payment of the purchase price or subscription fee with respect to the defective Exo Product. All warranties are provided to Customer only and not to any third party, and Customer may not pass through any Exo warranty to any third party. No agent, employee, or representative of Exo has any authority to bind Exo to any affirmation, representation, or warranty relating to the Exo Products other than as specifically provided herein. The warranties set forth in this Section allocate risks of Exo product defect between Customer and Exo, and both Customer and Exo acknowledge and agree that the price of the Exo Products reflects such risk allocation.

e. The foregoing warranties are provided subject to the following conditions: (1) if Exo Device becomes defective during the warranty period, Customer shall notify Exo promptly in writing of any claims; (2) if Exo advises Customer to return Exo Device for repair or replacement, Customer will follow Exo's instructions with respect to the return of such Exo Device, including without limitation the RMA Policy; (3) if Exo Device alleged by Customer to be defective or returned to Exo for repair as provided in this Section is either (i) not under warranty, or (ii) determined not to be defective, or (iii) defective due to any cause or condition not covered under the warranty provided herein, Customer agrees to reimburse Exo for all reasonable expenses incurred in the shipping, handling, and inspection of such Exo Device; (4) Exo Devices will be accepted by Exo for warranty claim verification only when returned by Customer in a condition which allows for suitable testing by Exo; (5) Exo will bear the costs of shipping defective Exo Device to Exo in accordance with the foregoing; and (6) if Exo elects to replace the allegedly defective Exo Device, the replacement will be shipped FOB Shipping Point, Freight Prepaid. In addition, if Customer claims that the Exo Works Subscription Services were not operational as warranted, Customer will provide documentary evidence of the unavailability.

f. If Exo verifies the warranty claim with respect to an Exo Device (other than a warranty claim primarily with respect to the software or Exo Works Subscription Services), then Exo will, within a reasonable period following Exo's receipt of the Exo Device subject to the warranty claim, at its expense and sole option: (1) repair the defect in the Exo Device; (2) replace the non-conforming Exo Device with an Exo Device of similar or better functional performance; or (3) credit or refund the purchase price for such Exo Device. If Exo verifies the warranty claim with respect to software or the Exo Works Subscription Services (including without limitation that the Exo Works Subscription Services were not operational), then Exo will, at its expense



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and sole option: (1) fix or repair the issue causing the warranty claim; or (2) credit or refund the amounts paid for such defective software or Exo Works Subscription Services corresponding to the period the issue occurred.

g. Exo shall have no obligation to Customer under the warranty, or otherwise, if:

i. the failure of Exo Works Subscription Services to materially conform to Exo's specifications can be attributable to Customer equipment, third-party software or hardware, or Customer Data;

ii. the failure of Exo Works Subscription Services to materially conform to Exo's specifications can be attributable to causes that are not the responsibility of Exo; or

iii. Customer fails to fulfill its responsibilities in connection with Installation Services under Section 2(b)(ix).

h. Customer acknowledges and agrees that the remedies set forth in this Section are Customer's sole and exclusive remedies for defective or allegedly defective Exo Products.

9. **Limitation of Liability and Release**

a. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EXO BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND BASED ON ANY CLAIM OR LEGAL THEORY, INCLUDING BUT NOT LIMITED TO DAMAGES FOR LOSS OF DATA, LOST OPPORTUNITY, LOST SAVINGS, LOST PROFITS, LOSS OF USE, BUSINESS INTERRUPTION OR COST OF SUBSTITUTE SERVICES OR TECHNOLOGY, EVEN IF INFORMED OF THE POSSIBILITY OF ANY SUCH DAMAGES IN ADVANCE.



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b. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL EXO'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS AND CONDITIONS, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), INDEMNIFICATION OBLIGATION, OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO EXO FOR THE INDIVIDUAL PRODUCT(S) THAT IS/ARE THE SUBJECT OF THE ALLEGED CLAIM AND DIRECTLY CAUSED THE ALLEGED DAMAGE. No action against Exo for breach hereof shall be commenced more than one (1) year after the accrual of the cause of action.

c. CUSTOMER ACCEPTS ALL LIABILITY FOR THE USE OF EXO PRODUCTS IN LIFE SUPPORT DEVICES OR SYSTEMS OR IN ANY OTHER CRITICAL APPLICATIONS. EXO PRODUCTS ARE NOT AUTHORIZED FOR USE AS CRITICAL COMPONENTS IN LIFE SUPPORT DEVICES OR SYSTEMS OR OTHER CRITICAL APPLICATIONS. Life support devices or systems are those which are intended to support or sustain life and whose failure to perform can be reasonably expected to result in a significant injury to the user. Critical components are those whose failure to perform can be reasonably expected to cause a failure of a life support device or system or affect its safety or effectiveness. Critical applications are those applications in which failure of an Exo Device or Exo Works Subscription Services could result directly or indirectly in death, personal injury, or severe property or environmental damage.

d. CUSTOMER HEREBY RELEASES EXO FROM ANY CLAIMS ARISING FROM OR RELATED TO THE CONDUCT OF THE CUSTOMER'S BUSINESS OR FOR ACTS OR OMISSIONS OF CUSTOMER OR ITS END USERS IN THE PROVISION OF MEDICAL CARE, AND THAT ANY RELIANCE UPON ANY OF EXO'S PRODUCTS HEREUNDER SHALL NOT DIMINISH THE CUSTOMER'S RESPONSIBILITY FOR MEDICAL CARE.

10. Indemnity

a. Exo will, at its sole option, defend or settle any legal action asserted against Customer by a third party to the extent based on a claim that any Exo Device or Exo Works Subscription Services directly infringes any U.S. patent, copyright, or trade secret of such third party. Exo will pay any damages finally awarded against Customer to the third party in any such action that is directly attributable to such claims if resulting from (i) a final, non-appealable judgment of a court of competent jurisdiction, or (ii) any settlement of such claims that Exo approved. Exo shall not be responsible for any settlement made or expense incurred without Exo's prior written consent. Notwithstanding anything else in this Agreement, Exo has no obligation to indemnify or defend claims arising from or relating to: (i) modification of any Exo Device or Exo Works Subscription Services by anyone other than Exo or the use of any Exo Device or Exo Works Subscription Services where such use is contrary to its specification or instructions for use; (ii) combination of any Exo Device or Exo Works Subscription Services with any thing other than other Exo Devices or Exo Works Subscription Services; (iii) implementation or compliance with, in whole or in part, any industry standard or specification (such as Wi-Fi, Bluetooth, PCI-E, HTML, ACPI, or EUI) promulgated by any recognized industry trade group, consortium or standard setting organization (such as IEEE, 3GPP, IETF, W3C, and USB-IF), or any intellectual property rights related thereto; (iv) Customer's continued use of any Exo Device or Exo Works Subscription Services after Customer was notified of infringement or after Exo informed Customer of a modification or workaround that would have avoided infringement; or (v) any claim by a third party after Customer has first asserted a claim of infringement or misappropriation against such third party. Customer will have the burden of proving that (i) the defense and indemnity obligations are required under this Section, and (ii) the exclusions set forth in this Section are inapplicable. Except as expressly provided in this Section, Exo has no obligation or liability to Customer for any actual or alleged infringement related to any Exo Device or Exo Works Subscription Services. The foregoing indemnity is limited to Customer. Customer may not assign, transfer or pass through this indemnity to any third party.

b. In the event any Exo Product is, or Exo determines it is likely to become, the subject of a claim for which Customer is entitled to defense and indemnity under this Section, Exo may in its sole discretion: (i) procure a license for Customer (at no expense to Customer) to continue using the Exo Product; (ii) replace the Exo Product with a similarly functioning non-infringing Exo Product; or (iii) modify the Exo Product so long as there is no material loss of functionality; or (iv) refund or credit Customer the purchase price for the Exo Device, less appropriate depreciation, in which case Customer will promptly ship the Exo Device back to Exo.

c. Customer shall, at its sole option, defend or settle any legal action asserted against Exo (including its licensors, and suppliers, and their respective directors, officers, shareholders, employees, contractors and agents) by a third party to the extent based on a claim of or arising from: (i) any gross negligence or willful misconduct by Customer; (ii) any failure by Customer to procure appropriate consents or authorizations, including from patients; (iii) any failure by Customer to comply with this Agreement, Addendum A (Data Privacy and Processing), Addendum B (Service Level Agreement), Addendum C (Terms and Conditions for Maintenance), or applicable Order Confirmation; (iv) Customer's use or misuse of any Exo Products; (v) Customer's or Customer's patients' data (whether properly or improperly obtained and/or transmitted); (vi) Customer equipment, including, without limitation, any failure or malfunction caused by non-Exo equipment connected to any of Exo's Devices or Exo Works Subscription Services; (vii) Customer's failure to comply with any applicable law to which it may be subject in the use of any Exo Products; (viii) the consequences of Customer's utilization of any Exo Products in respect of any third party; and (viii) any allegation that Customer equipment or data infringes any patent, copyright or trade secret of such third party.



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- d. Should Customer purchase or use an Exo Product for any critical application, Customer shall indemnify and hold Exo harmless against all claims, costs, damages and expenses and reasonable attorneys' fees arising out of, directly or indirectly, any claim of product liability, personal injury, or death arising in any way out of use of the Exo Product (whether an Exo Device or Exo Subscription Services) in a life support device or system or other critical application.
- e. The Party having the benefit of the indemnification obligation under this Section ("**Indemnitee**") shall:
- i. give the Party having the indemnification obligation ("**Indemnitor**") prompt notice of any claim;
 - ii. allow the Indemnitor to have sole control over the defense and settlement of the claim, provided, however, that the Indemnitee shall have the option, at its sole discretion, to participate in the defense of any such claim using attorneys selected by it, the costs and expenses of which shall be the responsibility of Indemnitee; and
 - iii. provide all assistance reasonably requested by Indemnitor, at Indemnitor's expense, in the defense and settlement of the claim.
- iv. The Indemnitor will not consent to the entry of any judgment or enter into any settlement with respect to a claim without the Indemnitee's prior written consent (not to be unreasonably withheld or delayed) unless:
- v. the judgment or proposed settlement involves only the payment of monetary damages by the Indemnitor, and does not impose injunctive or other equitable relief upon or otherwise adversely affect the Indemnitee;
- vi. there are no additional claims pending against the Indemnitee, and no adverse impact on existing claims as a result of the judgment or proposed settlement; and
- vii. the Indemnitee will have no liability with respect to such judgment or proposed settlement and will not otherwise be materially and adversely affected by the terms of such settlement.

11. **Product Discontinuance**

Exo reserves the right to discontinue production of any Exo Product at any time without notice except for that quantity of Exo Product for which Exo has received and acknowledged an Order Confirmation and has scheduled such Exo Product for shipment within six (6) months of the date of such acknowledgment. For that quantity of Exo Product impacted by product discontinuance for which Exo has received and acknowledged an Order Confirmation and scheduled shipment as set forth in the prior sentence, Exo reserves the right to replace that discontinued Exo Product with another Exo Product that is functionally equivalent or better than the Exo Product being discontinued.

12. **Force Majeure**

Exo shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, epidemics, pandemics, accident, riot, war, government intervention or restrictions, embargoes, strikes, labor difficulties, equipment failure, internet or telecommunications failures, cyberattacks, late delivery by suppliers or other difficulties which are beyond the reasonable control of Exo. QUANTITIES OF EXO PRODUCT ARE SUBJECT TO AVAILABILITY. In the event of production difficulties or Exo Product shortages, Exo may allocate sales and deliveries at its sole discretion.



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13. Confidential Information

a. The Parties, including its respective affiliates, employees, agents and subcontractors, shall comply with the terms of any nondisclosure agreement between the Parties (“**NDA**”) with respect to confidential and proprietary information belonging to one Party (“**Disclosing Party**”), and disclosed to the other Party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (“**Confidential Information**”). Confidential Information may include, without limitation, patient information, information concerning research, development, design details and specifications, financial information, procurement requirements, engineering and manufacturing information, customer lists, business forecasts, sales information and marketing plans, internal business processes, product designs.

b. If no NDA exists or if the NDA has expired or is no longer in full force and effect, then each Party shall only use the other Party’s Confidential Information for the purposes of this Agreement and shall keep such information in strict confidence.

c. The Receiving Party shall restrict disclosure of the Disclosing Party’s Confidential Information solely to its employees, attorneys, accountants, contractors and other representatives with a need to know, not disclose it to any third parties, except End Users as permitted hereunder, and use no less than reasonable care in its obligations.

d. Confidential Information will not, however, include any information that: was publicly known and made generally available in the public domain prior to the time of disclosure by the Disclosing Party; becomes publicly known and made generally available after disclosure by the Disclosing Party to the Receiving Party through no action or inaction of the Receiving Party; is already in the possession of the Receiving Party at the time of disclosure by the Disclosing Party, as shown by the Receiving Party’s files and records; is obtained by the Receiving Party from a third party without a breach of the third party’s obligations of confidentiality; or is independently developed by the Receiving Party without use of or reference to the Disclosing Party’s Confidential Information, as shown by documents and other competent evidence in the Receiving Party’s possession.

e. A Receiving Party may disclose the Disclosing Party’s Confidential Information if required by law so long as the Receiving Party gives the Disclosing Party prompt written notice of the requirement prior to the disclosure and assistance in obtaining an order protecting the information from public disclosure.

f. Neither Party will reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other Party’s Confidential Information and that are provided to the Party in accordance with this Agreement.



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14. Export Compliance

Customer is responsible for complying with all applicable export control laws and regulations with respect to the reexport, shipment, transfer, or use of Exo Products. Customer will not provide Exo Devices to entities or individuals that are prohibited from receiving such Exo Devices under applicable laws, including the laws of the United States. A current list of such prohibited entities under U.S. law is available at the following link: <https://www.bis.doc.gov/index.php/policy-guidance/lists-of-parties-of-concern> and <https://www.commerce.gov/tags/entity-list>. Customer will not export, reexport, or transfer Exo Devices as follows, unless it has authorization to do so under any applicable export control and sanctions laws of the United States: (a) to the Crimea Region, Cuba, Iran, North Korea, Sudan, Syria, or any other country sanctioned or embargoed under U.S. law, or any nationals of such countries; (b) for military end-uses or military end-users restricted under United States laws; and (c) for uses in connection with chemical, biological, or nuclear weapons, or missiles capable of delivering such weapons.

15. Resale

Customer acknowledges that the Exo Devices may be authorized by federal or applicable state law for use only by licensed medical professionals. Customer agrees not to resell Exo Devices, directly or indirectly, to any third party without Exo's prior written authorization.

16. Waiver

Exo's failure to enforce any of the provisions of this Agreement, to exercise any election or option provided herein, or to require Customer's performance of any of the provisions herein at any time will not in any way be construed as a waiver of such provisions.

17. Assignments

Customer may not assign its rights or obligations hereunder without Exo's express prior written consent and any attempted assignment without such consent shall be null and void. Exo shall be entitled at any time to assign its rights or obligations hereunder to any third party without Customer's prior written consent.

18. Applicable Law

The terms and conditions of this Agreement shall be governed by the laws of the State of California. The Parties hereby acknowledge and agree that the provisions of the Sale of Goods (United Nations Conventions) Act, Chapter 283A, as amended or replaced, are expressly excluded and shall not apply hereto or Exo's sale of the Exo Device to Customer. The Parties hereby waive any objection to the exclusive jurisdiction and venue of the state and federal courts in San Francisco, California.

19. Term and Termination

a. This Agreement commences on the Effective Date and shall remain in effect until terminated in accordance with Section 19 (b) or Section 19 (c) below.

b. Customer's access to Exo Works Subscription Services shall commence on the completion of Installation Services (if applicable). Upon commencement, Customer's access to Exo Works Subscription Services shall continue for the Subscription Term specified on such Order Confirmation. At the expiration of each Subscription Term, the Subscription Term for all Exo Works Subscription Services will automatically renew for successive one (1) year terms, unless either Party elects not to renew by notifying the other Party, in writing and at least sixty (60) days prior to the expiration of the current term, of its intention not to renew (or at any time before the renewal date if the expiring Order Confirmation provides for a month-to-month subscription). Except as otherwise specified in a written notice sent to Customer at least sixty (60) days prior to renewal (or thirty (30) days, if the expiring Order Confirmation provides for a month-to-month subscription), Exo's per-unit pricing for any renewal Subscription Term shall not increase by more than five percent (5%) over the renewing Subscription Term. Any introductory or temporary discount offered in a previous Subscription Term does not apply to a renewal Subscription Term. For the avoidance of doubt, the foregoing caps on price increases shall not apply to renewals in which a Customer is



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transitioning from a month-to-month subscription to a longer subscription.

c. Either Party may terminate this Agreement and/or any Order Confirmation by providing written notice to the other Party in the event the other Party materially breaches any of its duties, obligations, or responsibilities under this Agreement and fails to: (i) cure such breach within thirty (30) days after receipt by the breaching Party of written notice specifying the breach, or (ii) if the breaching Party is incapable of curing such breach within thirty (30) days, provide the other Party with an acceptable plan for curing such breach within ten (10) days after receipt of such notice and thereafter curing such breach in accordance with such plan. In addition, a Party may terminate this Agreement by providing written notice to the other Party if there is no Order Confirmation in effect for more than thirty (30) days, continuously.

d. If the Agreement is terminated by Exo as a result of a material breach by Customer, Customer shall remain liable for the payment for the entire Exo Works Subscription Services fee, as applicable, for the then-current Subscription Term, as the case may be, and any unpaid amounts still due and owing for Exo Devices.

e. Expiration or termination of one Order Confirmation shall not affect any other Order Confirmation. In the event of termination of this Agreement, Customer shall have no access to the Exo Works Subscription Services following the Subscription Term, except for limited access provided for a period of thirty (30) days to Customer's designated administrative end users solely for purposes of permitting Customer to retrieve any of its data or images stored as part of Exo Works Subscription Services. After thirty (30) days, Exo shall have no obligation to maintain or provide any Customer Data and may, unless legally prohibited, irrevocably delete all Customer Data in its possession.

f. The following provisions shall survive the termination or expiration of this Agreement for any reason and shall remain in effect after any such termination or expiration: Sections 3 (Prices and Taxes), 4 (Payment and Remedies), 5 (Ownership and Reservation of IP Rights), 7 (Customer Responsibilities and Acknowledgements), 8 (Warranties and Disclaimers), 9 (Limitation of Liability and Release), 10 (Indemnity), 12 (Force Majeure), 13 (Confidential Information), 14 (Export Compliance), 15 (Resale), 16 (Waiver), 17 (Assignments), 18 (Applicable Law), 19 (Term and Termination), 20 (Notices), and 21 (Miscellaneous). Termination or expiration of this Agreement shall not affect any obligation accrued or arising prior to such termination or expiration.

20. Notices

a. Notices must be in writing, addressed, and delivered by at least one of the following methods: personally; by certified mail return receipt requested; by facsimile transmission with a confirming copy sent the same day by first class mail; or by a nationally recognized overnight courier service.

b. Each notice shall be deemed given upon receipt of such notice by the other Party.

c. All notices shall be sent to the Parties at the addresses set forth in the Order Confirmation.



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21. Miscellaneous

- a. Subject to the exceptions set forth in Section 2 (Exo Software and Subscription Services) and Section 3 (Prices and Taxes) as they relate to Customer utilization of Exo Works Subscription Services licenses exceeding that provided for in an Order Confirmation, this Agreement's terms and conditions, including those on the Order Confirmation, constitute the entire agreement with regard to this transaction and expressly supersede and replace any prior or contemporaneous agreements, written or oral, relating to said transaction.
- b. This Agreement's terms and conditions (but not its associated Addenda) may only be amended or modified in a writing which specifically states that it amends these terms and conditions and is signed by an authorized representative of each Party.
- c. If a Party waives any term or provision or the other Party's breach of this Agreement, such waiver shall not be effective unless it is in writing and signed by the Party against whom such waiver is asserted.
- d. This Agreement's terms and conditions shall be binding upon the heirs, successors, and assigns of the Parties hereto.
- e. If any provision of this Agreement is adjudged to be unenforceable in whole or in part, such adjudication shall not affect the validity of the remainder hereof.
- f. Each provision of this Agreement's terms and conditions is severable from every other provision and constitutes a separate, distinct, binding covenant.
- g. Headings are inserted solely for convenience of reference, shall not constitute a part of this Agreement's terms and conditions or otherwise affect the interpretation hereof.
- h. The Parties are independent contractors. Nothing in this Agreement shall be construed to create a joint venture, partnership, franchise, or an agency relationship between the Parties.
- i. Each Party represents and warrants to the other Party that it has the full right, power and authority to enter into this Agreement, to perform its obligations hereunder; and this Agreement has been duly executed by it and is legally binding upon it, enforceable in accordance with its terms, and does not conflict with any agreement, instrument or understanding, oral or written, to which it is a Party or by which it may be bound, nor violate any material law having jurisdiction over it.

[signature page follows]



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I acknowledge that I have read, understand, and agree to these Exo Imaging, Inc. Terms and Conditions of Use, and I represent and warrant that I am authorized to sign on behalf of the Customer named below.

Customer Representative Signature:

Customer Representative Name:

Customer Representative Title:

Customer Name:

Date:

Address for Notice:



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Addendum A

Data Privacy and Processing

1. Definitions

- a. **"CCPA"** means California Civil Code Sec. 1798.100 et seq. (also known as the California Consumer Privacy Act of 2018).
- b. **"Controller"** means the natural or legal person, public authority, agency, or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.
- c. **"Data Protection Laws"** means all applicable worldwide legislation, rule, or regulation relating to data protection and privacy which applies to the respective Party in the role of Processing Personal Data in question under this Agreement, including without limitation HIPAA as amended by the HITECH Act, European Data Protection Laws, the CCPA and the data protection and privacy laws of Australia and Singapore; in each case as amended, repealed, consolidated or replaced from time to time.
- d. **"Data Subject"** means the individual to whom Personal Data relates.
- e. **"European Data Protection Laws"** means data protection laws applicable in Europe, including: (i) Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation) ("**GDPR**"); (ii) Directive 2002/58/EC concerning the processing of personal data and the protection of privacy in the electronic communications sector; and (iii) applicable national implementations of (i) and (ii); or (iii) in respect of the United Kingdom, any applicable national legislation that replaces or converts in domestic law the GDPR or any other law relating to data and privacy as a consequence of the United Kingdom leaving the European Union; and (iv) Swiss Federal Data Protection Act on 19 June 1992 and its Ordinance; in each case, as may be amended, superseded or replaced.
- f. **"Instructions"** means the written, documented instructions issued by a Controller to a Processor and directing the same to perform a specific or general action with regard to Personal Data (including, but not limited to, depersonalizing, blocking, deletion, making available).
- g. **"Personal Data"** means any information relating to an identified or identifiable individual where such information is contained within Customer Data (as defined below) and is protected similarly as personal data, personal information or personally identifiable information under applicable Data Protection Laws.
- h. **"Personal Data Breach"** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored, or otherwise Processed by us and/or our Sub-Processors in connection with the provision of Exo Works Subscription Services. "Personal Data Breach" will not include unsuccessful attempts or activities that do not compromise the security of Personal Data, including unsuccessful log-in attempts, pings, port scans, denial of service attacks, and other network attacks on firewalls or networked systems.
- i. **"Processing"** means any operation or set of operations which is performed on Personal Data, encompassing the collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction or erasure of Personal Data. The terms "Process," "Processes," and "Processed" shall be construed accordingly.
- j. **"Processor"** means a natural or legal person, public authority, agency, or other body which Processes Personal Data on behalf of the Controller.
- k. **"Sub-Processor"** means any Processor engaged by Exo to assist in fulfilling Exo's obligations with respect to the provision of Exo Works Subscription Services under the Agreement. Sub-Processors may include third parties but will exclude any Exo employee or consultant.

2. Customer Rights, Obligations and Responsibilities

- a. As between the Parties, the data, images, imaging studies, and content that Customer or an End User inputs, transmits, uploads, transfers, submits, discloses, or otherwise provides to the Exo Works Subscription Service shall remain the exclusive property of Customer (collectively, the "**Customer Data**"). Notwithstanding anything in this Agreement or in any Business Associate Agreement between the Parties to the contrary, and notwithstanding any termination or expiration of this Agreement, Customer Data that has been fully and permanently de-identified in accordance with HIPAA ("**Anonymized Data**") shall be excluded from the foregoing definition of Customer Data.



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b. Customer acknowledges and agrees that Exo does not require any specific data, including Personal Data, from Customer or End User, that Customer and End User each controls the content of any Customer Data that is inputted, transmitted, uploaded, transferred, submitted, disclosed, processed, collected, stored, replicated or in any other way accessed or used through the use of the Exo Works Subscription Services, and that Exo has no obligation to monitor the content of any Customer Data.

c. Within the scope of this Agreement and in Customer's use of an Exo Device or Exo Works Subscription Services, Customer shall be responsible for complying with all requirements that apply to it under applicable Data Protection Laws with respect to its Processing of Personal Data and any Instructions Customer issues to Exo. In particular, Customer shall be responsible for procuring any necessary consents and making any notifications under applicable Data Protection Laws with respect to the provision of the Customer Data to Exo through the Exo Works Subscription Services and the Processing of such Customer Data by Exo through the Exo Works Subscription Services. Upon request of Exo, Customer shall provide Exo with documentation to support such consent.

d. In particular but without prejudice to the generality of the foregoing, Customer acknowledges and agrees that Customer will be solely responsible for: (i) the accuracy, quality, and legality of Customer Data and the means by which Customer acquired Personal Data; (ii) complying with all necessary transparency and lawfulness requirements under applicable Data Protection Laws for the collection and use of the Personal Data, including obtaining any necessary consents and authorizations (particularly for use by Customer for marketing purposes); (iii) ensuring Customer has the right to transfer, or provide access to, the Personal Data to Exo for Processing in accordance with the terms of this Agreement; (iv) ensuring that your Instructions to Exo regarding the Processing of Personal Data comply with applicable laws, including Data Protection Laws; and (v) complying with all laws (including Data Protection Laws) applicable to any emails or other content created, sent or managed through the Subscription Services, including those relating to obtaining consents (where required) to send emails, the content of the emails and its email deployment practices. Upon request of Exo, Customer shall provide Exo with documentation to support any such consents and authorizations.

e. Customer shall inform Exo without undue delay if it is not able to comply with its responsibilities under this Section or applicable Data Protection Laws.

f. To the extent that GDPR is applicable to Customer Data, Exo refers Customer and End User to its GDPR Privacy Policy ("**Exo GDPR Privacy Policy**"), located at www.exo-inc.com/GDPR.

3. Exo Obligations and Responsibilities

a. Exo acknowledges that in the performance of the Exo Works Subscription Services, Exo may have access to Customer Data. Exo shall only use and disclose Customer Data in accordance with applicable Data Protection Laws and the terms of the Business Associate Agreement ("**BAA**") attached hereto as Annex 1 (Business Associate Agreement).

b. Exo will only Process Personal Data for the purposes described in the Agreement and this Addendum A (Data Privacy and Processing) or as otherwise agreed within the scope of your lawful Instructions, except where and to the extent otherwise required by applicable law. Exo is not responsible for compliance with any Data Protection Laws applicable to Customer or Customer's industry that are not generally applicable to Exo.

c. If Exo becomes aware that it cannot Process Personal Data in accordance with Customer's Instructions due to a legal requirement under any applicable law, Exo will (i) promptly notify Customer of that legal requirement to the extent permitted by the applicable law; and (ii) where necessary, cease all Processing (other than merely storing and maintaining the security of the affected Personal Data) until such time as Customer issues new Instructions with which Exo is able to comply. If this provision is invoked, Exo will not be liable to Customer under the Agreement for any failure to perform the applicable Exo Works Subscription Services until such time as Customer issues new lawful Instructions with regard to the Processing.

d. Exo will implement and maintain appropriate physical, technical, and organizational measures to protect Personal Data from Personal Data Breaches ("**Security Measures**"). Notwithstanding any provision to the contrary, Exo may modify or update the Security Measures at its discretion provided that such modification or update does not result in a material degradation in the protection offered by the Security Measures.

e. Exo will ensure that any personnel whom it authorizes to Process Personal Data on Exo's behalf is subject to appropriate confidentiality obligations (whether a contractual or statutory duty) with respect to that Personal Data.

f. Exo will notify Customer without undue delay after Exo becomes aware of any Personal Data Breach and will provide timely information relating to the Personal Data Breach as it becomes known or reasonably requested by Customer. At Customer's request, Exo will promptly provide Customer with such reasonable assistance as necessary to enable Customer to notify relevant Personal Data Breaches to competent authorities and/or affected Data Subjects, if Customer is required to do so under Data Protection Laws.

g. Exo will delete or return all Customer Data, including Personal Data (including copies thereof) Processed pursuant to this Addendum A (Data Privacy and Processing), on termination or expiration of Customer's Exo Works Subscription Service in accordance with the procedures and timeframes set out in the Agreement, save that this requirement shall not apply to the extent Exo is required by applicable law to retain some or all of the Customer Data, or to Customer Data it has archived on back-up systems, which data Exo will securely isolate and protect from any further Processing and delete in accordance



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with its deletion practices. Customer may request the deletion of Customer's Exo Works Subscription Service account after the expiration or termination of Customer's subscription by sending a request to Exo. Customer may retrieve Customer Data from Customer's account in accordance with Exo's Terms and Conditions of Use.

4. Sub-Processors

- a. Customer agrees that Exo may engage Sub-Processors to Process Personal Data on Customer's behalf. Exo has currently appointed, as Sub-Processors, the third parties listed in Annex 2 to this Addendum A (Data Privacy and Processing).
- b. Where Exo engages Sub-Processors, Exo will impose data protection terms on the Sub-Processors that provide at least the same level of protection for Personal Data as those in this Addendum A (Data Privacy and Processing), to the extent applicable to the nature of the services provided by such Sub-Processors. Exo will remain responsible for each Sub-Processor's compliance with the obligations of this Addendum A (Data Privacy and Processing) and for any acts or omissions of such Sub-Processor that cause Exo to breach any of its obligations under this Addendum A (Data Privacy and Processing).

5. Data Transfers

Customer acknowledges and agrees that Exo may access and Process Personal Data on a global basis as necessary to provide Exo Works Subscription Services in accordance with the Agreement, and in particular that Personal Data will be transferred to and Processed by Exo Imaging, Inc. in the United States and to other jurisdictions where Exo and Sub-Processors have operations. Exo will ensure such transfers are made in compliance with the requirements of Data Protection Laws.

6. General Provisions

- a. Notwithstanding anything else to the contrary in the Agreement, Exo reserves the right to make any updates and changes to this Addendum A (Data Privacy and Processing) and the terms of Section 21(b) of the Agreement shall not apply.
- b. If any individual provisions of this Addendum A (Data Privacy and Processing) are determined to be invalid or unenforceable, the validity and enforceability of the other provisions of this Addendum A (Data Privacy and Processing) will not be affected.
- c. Each Party and each of their Affiliates' liability, taken in aggregate, arising out of or related to this Addendum A (Data Privacy and Processing), whether in contract, tort or under any other theory of liability, will be subject to the limitations and exclusions of liability set out in Section 9 "Limitation of Liability and Release" of the Agreement and any reference in such section to the liability of a Party means aggregate liability of that Party and all of its Affiliates under the Agreement (including this Addendum A (Data Privacy and Processing)).



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d. This Addendum A (Data Privacy and Processing) will be governed by and construed in accordance with Section 18 “Applicable Law,” unless required otherwise by Data Protection Laws.

Addendum B

Service Level Agreement (“SLA”)

Exo Works Subscription Services Availability. Exo will use commercially reasonable efforts to make Exo Works Subscription Services generally available twenty-four (24) hours a day, seven (7) days a week, and will provide Availability of Exo Works Subscription Services of at least 99% (“**Availability Commitment**”).

“**Availability**” or “**Available**” means the time during each calendar month that Exo Works Subscription Services is available for use by you.

“**Downtime**” means the time that Exo Works Subscription Services are not Available but excluding Excused Unavailability.

“**Excused Unavailability**” means: (i) scheduled maintenance (currently 12:00am US CST Sunday to 4:00am US CST Sunday, or such other alternative time outside of 8 am through 8 pm US CST Monday through Friday, upon notice to you); (ii) unavailability caused by acts or omissions of you or its agents or caused by any breach by you of the Agreement or this SLA; (iii) unavailability caused by network unavailability or bandwidth limitations outside of the Exo network; (iv) issues arising from bugs or other problems in the software, firmware or hardware of Exo suppliers; (v) hacks, malicious introduction of viruses, disabling devices, and other forms of attacks that disrupt access to Exo Works Subscription Services; (vi) power outages or other telecommunications or Internet failures; and (vii) events outside of Exo’s control. In the case of subsections (iv) and (v), such events shall be included in the calculation of Excused Unavailability if the outage could not have been prevented by reasonable and customary precautions in the hosting industry.

Availability will be calculated as follows: (total minutes in any calendar month – total minutes of Downtime) divided by (the total minutes in such calendar month).

If Exo fails to meet the Availability Commitment for two (2) consecutive calendar months or fails to meet the Availability Commitment for any three (3) calendar months within any twelve (12) month period, then by notice given within thirty (30) days after the end of the month which triggered your right of termination, you may terminate Exo Works Subscription Services effective thirty (30) days after receipt of the notice, and receive a refund of any pre-paid fees for periods after the effective date of termination. The provisions of this SLA state your sole and exclusive remedy for any service level deficiencies of any kind.

Exo will use commercially reasonable efforts to provide Exo Works Subscription Services support to you comprised of (i) on-line access to the Exo support portal generally available twenty-four (24) hours a day, seven (7) days a week (subject to circumstances outside of Exo control); (ii) Exo telephone/email support (currently 8 am through 8 pm US CST Monday through Friday); and (iii) access to your Customer Success Manager. Exo will use commercially reasonable efforts to respond to your inability to access Exo Works Subscription Services or a component of Exo Works Subscription Services, which had previously performed as expected (“**Problem**”) within one (1) business day of the Problem being reported by you to the Exo support team through one of the three methods identified above.

Addendum C

Terms and Conditions for Maintenance

This Addendum C, Terms and Conditions for Maintenance, further specifies Maintenance services to be provided by Exo to Customer regarding Exo Works Enterprise (only) licensed by Exo to Customer (“**Maintenance**”).



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1. **Definitions.** Capitalized terms used herein will have the same meaning as set forth in the Agreement unless otherwise defined herein. The following terms will have the meanings set forth below:
 - a. **“Major Release”** means an update that adds substantial additional functionality, features, and value to the Exo Works Enterprise.
 - b. **“Minor Release”** means all updates to Exo Works Enterprise other than Major Releases, including those that support new releases of operating systems and devices.
 - c. **“Severity Levels”** means the four severity levels defined below:
 - d. **“Severity 1”**: A type of error that: (1) renders the entire or any part of Exo Works Enterprise inoperative or (2) causes Exo Works Enterprise to fail catastrophically. No workaround exists, or the available workaround is unacceptable due to its operational impact on Customer's business.
 - e. **“Severity 2”**: A type of error that significantly degrades the performance of Exo Works Enterprise or materially restricts Customer's use of Exo Works Enterprise.
 - f. **“Severity 3”**: A type of error that causes only a minor impact on the use of Exo Works Enterprise.
 - g. **“Severity 4”**: Proposed enhancements or usage questions.
 - h. **“Workaround”** means a change in the procedures followed or data supplied to avoid an error without materially impairing the performance of the Exo Works Enterprise.
2. **Maintenance.** Maintenance services are as defined in the Agreement and this Addendum C and include the following:
 - a. **Supported versions.** Exo will provide Maintenance for the then-current Major Release of Exo Works Enterprise and the one prior Major Release. Exo will provide the same level of support and error correction services for all supported versions of Exo Works Enterprise.
 - b. **Updates and error correction.** Exo will notify Customer of all errors in Exo Works Enterprise or documentation of which Exo becomes aware and will provide available information bulletins and access to any Internet data files or information relating to such errors. Maintenance includes provision of all available updates to Exo Works Enterprise at no additional charge to Customer.



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c. Technical Support Contacts. Customer will designate support contacts who may communicate with Exo's support organization regarding support issues. Customer may change their support contacts from time to time upon notice to Exo. Exo will provide Customer's support contacts with any user IDs, passwords, access procedures, and other such information to enable the support contacts to access Exo's telephone and electronic support systems.

d. Telephone and Web Support Services. Exo will respond to timely requests for technical support services upon notification at Help@exo.inc. An Exo technical support specialist will respond to the request during the hours of 8:00 a.m. U.S. Central time to 8:00 p.m. U.S. Central time, Monday through Friday.

Error	Response Time	Exo Action
Severity Level 1	30-60 minutes within receipt of request, via email or phone. Exo will review and communicate back to Customer within 5 business hours. System down either within software or device. Also includes security issues	Work until error correction is achieved. Escalate if error not corrected within 24 hours. Exo will work until the root cause is confirmed and creates an approved workaround or deploys a hotfix within 3 business days.
Severity Level 2	Less than 60 minutes within receipt of request, via email or phone. Exo will review and communicate back to Customer within 24 business hours. Software or device is causing an immediate and level of impact on patients or operations..	Work during business hours until the root cause is confirmed, and confirmation of a hotfix or next release date is delivered.
Severity Level 3	24 hours within receipt of request. Exo will review and communicate back to Customer within 6 business days. Question or issue that isn't affecting all patients or providers .	Error correction or acceptable Workaround provided within 6 business days. Error correction is prioritized in the Enterprise roadmap if workaround is initially provided to address problem.
Severity Level 4	48 hours. Verbal or email acknowledgment Question unrelated to patient care or minor update. How to directions within the software or device. Exo will review and respond back to Customer within 6 business days.	Question answered or minor update considered for next release.

Exhibit B



August 27, 2024

To Whom It May Concern

This letter is to confirm that Exo Iris handheld pMUT-based ultrasound probe (“Exo Iris™”) is a sole source product, designed, manufactured, sold, and distributed exclusively in the United States of America by Exo Imaging, Inc. Exo Iris must be purchased directly by institutions from Exo Imaging, Inc. at the address below. There are no third-party agents or dealers authorized to represent this product in the United States. Exo Iris and associated workflow software (including, without limitation, Exo Works®) are proprietary to Exo Imaging, Inc. and subject to U.S. patents owned by Exo Imaging, Inc.

Sincerely,

Steven Bowers

Vice President, Legal and General Counsel

Exhibit C

Federal Clauses

Contractor understands and acknowledges that this Agreement may be totally or partially funded with federal and or state funds from the Department of Homeland Security and or the Office of the Governor. As a condition of receiving these funds, Contractor represents that it is and will remain in compliance with all federal and or state terms as stated below. These terms flow down to all third party contractors and their subcontracts at every tier that exceed the simplified acquisition threshold, unless a particular award term or condition specifically indicates otherwise. The Contractor shall require that these clauses shall be included in each covered transaction at any tier.

1. Activities Conducted Abroad

Contractor must ensure that project activities carried on outside the United States are coordinated as necessary with appropriate government authorities and that appropriate licenses, permits, or approvals are obtained.

2. ADA Access.

The Contractor agrees to comply with all applicable provisions of section 504 of the Rehabilitation Act of 1973, as amended, with 29 U.S.C. § 794, which prohibits discrimination on the basis of disability; with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 et seq., which requires that accessible facilities and services be made available to individuals with disabilities; and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 et seq., which requires that buildings and public accommodations be accessible to individuals with disabilities, and any subsequent amendments to these laws; (4) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability in State and Local Government Services," 28 C.F.R. Part 35; (5) U.S. DOJ regulations, "Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities," 28 C.F.R. Part 36; (6) U.S. General Services Administration (U.S. GSA) regulations, "Accommodations for the Physically Handicapped," 41 C.F.R. Subpart 101-19; (7) U.S. EEOC, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630.

3. Child Support.

Per Texas Family Code 231.006, a child support obligor or business entity remains ineligible to receive payments from state funds under a contract to provide property, materials, or services; or a state funded loan until: (1) all arrearages have been paid; (2) the obligor is in compliance with a written repayment agreement or court order as to any existing delinquency; or (3) the court of continuing jurisdiction over the child support order has granted the obligor an exemption from ineligibility as part of a court-supervised effort to improve earnings and child support payments.

Before payment can be released Contractor will supply County with the name and social security number of the individual or sole proprietor and each partner, shareholder, or owner with an ownership interest of at least 25 percent of the business entity.

Under Section 231.006, Family Code, the Contractor certifies that the individual or business entity named in this contract, bid, or application is not ineligible to receive the specified grant, loan, or payment and acknowledges that this contract may be terminated and payment may be withheld if this certification is inaccurate.

4. Civil Rights/Nondiscrimination Requirements.

Contractor will comply, with the nondiscrimination requirements which may include the Civil Rights Act of 1964 (42 USC § 2000d); the Civil Rights Act of 1968 (42 USC § 3601 et seq.); the Rehabilitation Act of 1973 (29 USC § 794); the Americans with Disabilities Act (ADA) of 1990 (42 USC § 12131-34); the Education Amendments of 1972 (USC §§ 1681, 1683, 1685-86); Title IX of the Education Amendments of 1972 (Equal Employment in Education Act) (20 USC § 1681 et seq.); the Age Discrimination Act of 1975 (42 USC §§ 6101-07); Titles I, II and III of the Americans with Disabilities Act; the Drug Abuse and Treatment Act of 1972 (PL 92-255); the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 (PL 91-616); Sections 523 and 527 of the Public Health Service Act of 1912 (42 USC §§ 290dd-3 and 290ee-3); and 28 CFR 38 (Equal Treatment for Faith-Based Organizations); see Ex. Order 13279 (equal protection of the laws for faith-based and community organizations) and Ex. Order 13559 (fundamental principles and policymaking criteria for partnerships with faith-based and neighborhood organizations).

More specifically, Contractor will comply with:

a. Americans with Disabilities Act of 1990. Contractor must comply with the requirements of Titles I, II, and III of the Americans with Disabilities Act, Pub. L. No. 101-336 (1990) (codified as amended at 42 U.S.C. Sections 12101- 12213), which prohibits recipients of federal funds from discriminating on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities.

b. Civil Rights Act of 1968. Contractor must comply with Title VIII of the Civil Rights Act of 1968, Pub. L. No. 90- 284, as amended through Pub. L. 113-4, which prohibits recipients of federal funds from discriminating in the sale, rental, financing, and advertising of dwellings, or in the provision of services in connection therewith, on the basis of race, color, national origin, religion, disability, familial status, and sex (see 42 U.S.C. Section 3601 et seq.), as implemented by the U.S. Department of Housing and Urban Development at 24 C.F.R. Part 100. The prohibition on disability discrimination includes the requirement that new multifamily housing with four or more dwelling units-i.e., the public and common use areas and individual apartment units (all units in buildings with elevators and ground-floor units in buildings without elevators)-be designed and constructed with certain accessible features. (See 24 C.F.R. Section 100, Subpart D).

c. Limited English Proficiency

Contractor must comply with Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2000d et seq.) prohibition against discrimination on the basis of national origin, which requires that recipients of federal financial assistance take reasonable steps to provide meaningful access to persons with limited English proficiency (LEP) to their programs and services. For additional

assistance and information regarding language access obligations, please refer to the DHS Recipient Guidance at <https://www.dhs.gov/guidance-published-help-department-supported-organizations-provide-meaningful-access-people-limited> and additional resources on <http://www.lep.gov>.

d. Civil Rights Act of 1964-Title VI. Contractors must comply with the requirements of Title VI of the Civil Rights Act of 1964 (codified as amended at 42 U.S.C. Section 2000d et seq.), which provides that no person in the United States will, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance. DHS implementing regulations for the Act are found at 6 C.F.R. Part 21 and 44 C.F.R. Part 7.

e. Rehabilitation Act of 1973. Contractor must comply with the requirements of Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. Section 794), as amended, which provides that no otherwise qualified handicapped individuals in the United States will, solely by reason of the handicap, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

f. Nondiscrimination in Matters Pertaining to Faith-Based Organizations. It is DHS policy to ensure the equal treatment of faith-based organizations in social service programs administered or supported by DHS or its component agencies, enabling those organizations to participate in providing important social services to beneficiaries. Contractors must comply with the equal treatment policies and requirements contained in 6 C.F.R. Part 19 and other applicable statutes, regulations, and guidance governing the participations of faith-based organizations in individual DHS programs.

g. Education Amendments of 1972. Contractors must comply with the requirements of Title IX of the Education Amendments of 1972, Pub. L. No. 92-318 (1972) (codified as amended at 20 U.S.C. Section 1681 et seq.), which provide that no person in the United States will, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any educational program or activity receiving federal financial assistance. DHS implementing regulations are codified at 6 C.F.R. Part 17 and 44 C.F.R. Part 19.

h. Age Discrimination Act of 1975. Contractor must comply with the requirements of the Age Discrimination Act of 1975 (Title 42 U.S. Code, Section 6101 et seq.), which prohibits discrimination on the basis of age in any program or activity receiving federal financial assistance.

5. Compliance with Federal Law, Regulations, and Executive Orders.

Contractor's attention is called to the fact that this Agreement between County and Contractor will be subject to financial assistance contracts between the County and various State or Federal agencies. The Agreement to be awarded, therefore, is subject to the terms of these agreements and will not proceed without these agreements having been duly executed. The Contractor will be required to comply with, in addition to other provisions of the agreement, the conditions required

by applicable federal regulations. Contractor will comply with all applicable federal law, regulations, executive orders, policies, procedures, and directives.

6. Contracting with Small, Minority Firms, Women's Business Enterprises and Labor Surplus Area Firms.

Contractor will take all necessary, affirmative steps to assure that qualified small and minority businesses, women's business enterprises, and labor area surplus firms are used when possible by:

- a) Placing small and minority businesses and women's business enterprises on solicitation lists;
- b) Assuring that it solicits small and minority businesses and women's business enterprises whenever they are potential sources;
- c) Dividing total requirements, *when economically feasible*, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises;
- d) Establishing delivery schedules, *where the requirement permits*, which encourage participation by small and minority businesses and women's business enterprises;
- e) Utilizing the assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce;
- f) Contractor must require subcontractors to take the five affirmative steps described in a-e above.

7. Cooperation with Monitoring, Audits and Records Requirements.

The Contractor agrees to cooperate with the Office of the Governor and any relevant federal agency generally, including on any compliance review or complaint investigation conducted by the Federal sponsoring agency or the Office of the Governor and on all grant monitoring requests, including requests related to desk reviews, enhanced programmatic desk reviews, and/or site visits.

The Contractor shall maintain adequate records that enable the Office of the Governor and any relevant federal agency to complete monitoring tasks, including to verify all reporting measures, requests for reimbursements, and expenditure of match funds related to this Grant Agreement. The Contractor shall maintain such records as are deemed necessary by the Office of the Governor, the State Auditor's Office, other auditors of the State of Texas, the federal government or such other persons or entities designated or authorized by the Office of the Governor to ensure proper accounting for all costs and performances related to this Grant Agreement.

The Office of the Governor may request documented proof of payment. Acceptable proof of payment includes, but is not necessarily limited to, a receipt or other documentation of a paid invoice, a general ledger detailing the specific revenue and expenditures, a monthly bank statement evidencing payment of the specific expenditure, bank reconciliation detail, copies of processed checks, or a printed copy of an electronic payment confirmation evidencing payment of the specific expenditure to which the reimbursement relates.

The Contractor authorizes DHS, the Office of the Governor, the Texas State Auditor's Office, the Comptroller General of the United States, and any relevant federal agency, and their representatives, the right to audit, examine, and copy all paper and electronic records, books, documents, accounting procedures, practices, and any other requested records, in any form; relevant to this Agreement and will make them readily available upon request. The Contractor will similarly permit access to facilities, personnel, and other individuals and information as may be necessary.

If requested, the Contractor shall submit to the Office of the Governor a copy of its most recent independent financial audit, any audited financial statements, related management letters and management responses of Contractor, and financial audit documents or portions thereof that are directly related to the Contractor's performance of its obligations under this Agreement.

The Office of the Governor may make unannounced monitoring visits at any time but will, whenever practical as determined at the sole discretion of the Office of the Governor, provide the Contractor with up to five (5) business days advance notice of any such examination or audit. Any audit of records shall be conducted at the Contractor's principal place of business and/or the location(s) of the Contractor's operations during the Contractor's normal business hours. The Contractor shall provide to the Office of the Governor or its designees, on the Contractor's premises, private space, office furnishings (including lockable cabinets), telephone services and Internet connectivity, utilities, and office-related equipment and duplicating services as the Office of the Governor or its designees may reasonably require to perform the audits described in this section.

In addition to the information contained in the required reports, other information may be required as requested by the Office of the Governor, including the Office of the Governor asking for more information regarding project performance or funds expenditures. In the event the Office of the Governor requires additional information regarding the information or data submitted, the Contractor will promptly provide the additional information. The Contractor also agrees to assist the Office of the Governor in responding to questions and assisting in providing information responsive to any audit, legislative request, or other inquiry regarding the grant award. Upon the request of the Office of the Governor, the Contractor must submit to the Office of the Governor any additional documentation or explanation the Office of the Governor may desire to support or document the requested payment or report submitted under this Agreement.

If after a written request by the Office of the Governor or a relevant federal agency, the Contractor fails to provide required reports, information, documentation, or other information within reasonable deadlines set by the Office of the Governor or the relevant federal agency, as required by this Agreement, or fails to fulfil any requirement in this section, then the Office of the Governor may consider this act a possible default under this Agreement, and the Contractor may be subject to sanctions including but not limited to, withholdings and/or other restrictions on the access to funds; referral to relevant agencies for audit review; designation of the Contractor as a high-risk Contractor; or termination of awards.

Contractor, at the sole cost of Contractor, agrees to cooperate with the creation, monitoring, and timely execution of any corrective action plan developed by the County, OOG, or relevant federal

agency, to address any findings, discrepancies, inadequacies, or deficiencies which an audit, financial or programmatic monitoring, investigations, review of awards, or other compliance review identifies. The failure to promptly and adequately address any investigative findings may result in grant funds being withheld, other related requirements being imposed, or other sanctions and penalties. Contractor understands and agrees that it must make every effort to address and resolve all outstanding issues, findings, or actions identified by OOG (and/or, in the case of a federally funded grant, a relevant federal agency) through the corrective action plan or any other corrective plan.

8. Debt to State

The State shall not be responsible for any debts associated with this Agreement.

9. DHS Specific Acknowledgements and Assurances.

All Contractors, successors, transferees, and assignees must acknowledge and agree to comply with applicable provisions governing DHS access to records, accounts, documents, information, facilities, and staff.

- a. Contractor must cooperate with any compliance reviews or compliance investigations conducted by DHS.
- b. Contractor must give DHS access to, and the right to examine and copy, records, accounts, and other documents and sources of information related to the federal financial assistance award and permit access to facilities, personnel, and other individuals and information as may be necessary, as required by DHS regulations and other applicable laws or program guidance.
- c. Contractor must submit timely, complete, and accurate reports to the appropriate DHS officials and maintain appropriate backup documentation to support the reports.
- d. Contractor must comply with all other special reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

10. Disputes and Resolutions.

Contractor understands that for all subcontracts of \$250,000 or more, the Contractor must include terms to address dispute resolution between the parties who shall attempt in good faith to resolve promptly any dispute arising out of or relating to the Agreement by negotiation between the parties.

11. Drug-Free Workplace Regulations.

Contractor must comply with drug-free workplace requirements of 2 C.F.R. Part 3001, which adopts the Government-wide implementation (2 C.F.R. Part 182) of Sec. 5152-5158 of the *Drug-Free Workplace Act of 1988* (41 U.S.C. §§ 8101-8106).

12. Examination of Records.

The Contractor agrees to provide County, the Office of the Governor and U.S. Department of Homeland Security, the Comptroller General of the United States or any of their authorized

representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the Agreement for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to comply and will require all subcontractors of any tier to comply with the record retention requirements in accordance with 2 C.F.R. 200.333. The Contractor agrees to retain, and will require its subcontractors of all tiers to retain, complete and readily accessible records related in whole or in part to the contract, including, but not limited to, all books, records, accounts, statistics, leases, subcontracts, arrangements other third party arrangements of any type, reports, and supporting materials related to those records required under the Agreement for a period of not less than three years after the date of termination or expiration of the Agreement, except in the event of litigation or settlement of claims arising from the performance of the Agreement, in which case Contractor agrees to maintain same until County, the Office of the Governor and U.S. Department of Homeland Security, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

13. Federal Debt

Contractor is required to be non-delinquent in their repayment of any federal debt. Examples of relevant debt include delinquent payroll and other taxes, audit disallowances, and benefit overpayments. (See OMB Circular A-129).

14. Fly America.

The Contractor agrees to comply with Preference for U.S. Flag Air Carriers (air carriers holding certificates under 49 U.S.C. Section 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. Section 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981 amendment to Comptroller General Decision B-138942.

And with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 C.F.R. Part 301-10, which provide that recipients and sub-recipients of Federal funds and their contractors are required to use U.S. Flag air carriers for U.S. Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

15. Government-wide Debarment and Suspension.

The Contractor shall comply and facilitate compliance with the U.S. Office of Management and Budget (U.S. OMB) "Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," 2 C.F.R. part 180. A contract award in any tier must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. § 180 that implement Executive Orders Nos. 12549 (3 C F R part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order No. 12549. These provisions apply to each contract at any tier of \$25,000 or more, and to each contract at any tier for a federally required audit (irrespective of the contract amount).

This certification is a material representation of fact relied upon by the County. If it is later determined that the Contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to DHS and County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The Contractor further agrees to include a provision requiring such compliance in its lower tier covered transactions.

16. Health and Human Services, Public Safety or Law Enforcement Agency Compliance

Contractor certifies that it as owner, operator or administrator of a facility has not had any licenses, certificates, or permits revoked by any health and human service agency or public safety or law enforcement agency.

17. Program Fraud, False Claims Act and Program Fraud Civil Remedies.

Contractor understands that County does not tolerate any type of fraud, waste or misuse of funds. Contractor shall comply with the requirements of the False Claims Act (31 U.S.C. Section 3729-3733) which prohibits the submission of false or fraudulent claims for payment to the federal government. Contractor understands and agrees that misuse of funds may result in a range of penalties, including suspension of current and future funds, suspension or debarment from federal and state grants, recoupment of monies provided under an award, and civil and/or criminal penalties. (See 31 U.S.C. Section 381-3812 which details the administrative remedies for false claims and statements made.)

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with funds from this Agreement.

18. Domestic Preferences for Procurements.

As appropriate and to the extent consistent with law, Contractor shall to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products procured with federal funds. For purposes of this clause, (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States. (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

19. Reporting of Fraud, Waste, and Abuse.

In the event, County becomes aware of any allegation or a finding of fraud, waste, or misuse of funds received for the performance of this Agreement, the County is required to immediately notify OOG of said allegation or finding and to continue to inform OOG of the status of any such on-going investigations. The County must promptly refer to OOG any credible evidence that a principal, employee, agent, subrecipient, contractor, subcontractor, or other person has -- (1) submitted a claim for award funds that violates the False Claims Act; or (2) committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving award funds. County must also immediately notify OOG in writing of any misappropriation of funds, fraud, theft, embezzlement, forgery, or any other serious irregularities indicating noncompliance with grant requirements.

The County must notify the local prosecutor's office of any possible criminal violations. County must immediately notify OOG in writing if a project or project personnel become involved in any litigation, whether civil or criminal, and the County must immediately forward a copy of any demand, notices, subpoenas, lawsuits, or indictments to OOG.

The County shall report any possible fraudulent or dishonest acts, waste, or abuse to OOG's Fraud Coordinator or Ethics Advisor at (512) 463-1788 or in writing to: Ethics Advisor, Office of the Governor, P.O. Box 12428, Austin, Texas 78711.

20. Restrictions and Certifications Regarding Non-Disclosure Agreements and Related Matters.

Contractor certifies that they have not required any employee or contractor to sign an internal confidentiality agreement or statement that prohibits or otherwise restricts, or purports to prohibit or restrict, the reporting (in accordance with law) of waste, fraud, or abuse to an investigative or law enforcement representative of a state or federal department or agency authorized to receive such information.

The foregoing is not intended, and shall not be understood to contravene requirements applicable to federal Standard Form 312 (which relates to classified information), Form 4414 (which relates

to sensitive compartmented information), or any other form issued by a federal department or agency governing the nondisclosure of classified information.

21. National Environmental Policy Act.

Contractor must comply with the requirements of the National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA, which requires recipients to use all practicable means within their authority, and consistent with other essential considerations of national policy, to create and maintain conditions under which people and nature can exist in productive harmony and fulfill the social, economic, and other needs of present and future generations of Americans.

22. No Obligation by Federal Government.

The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the County, Contractor, or any other party pertaining to any matter resulting from the Agreement.

23. Notice of Funding Opportunity.

All of the instructions, guidance, limitations, and other conditions set forth in the federal Notice of Funding Opportunity (NOFO) for this program are incorporated here by reference in the award terms and conditions.

24. Political Activities.

Contractor must comply with 31 U.S.C. Section 1352, which provides that none of the funds provided under a federal financial assistance award may be expended by the recipient to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee or a Member of Congress in connection with any federal action related to a federal award or contract, including any extension, continuation, renewal, amendment, or modification.

Grant funds may not be used in connection with the following acts by agencies or individuals employed by grant funds:

A. Unless specifically authorized to do so by federal law, grant recipients or their subgrantees or contractors are prohibited from using grant funds directly or indirectly for political purposes, including lobbying or advocating for legislative programs or changes; campaigning for, endorsing, contributing to, or otherwise supporting political candidates or parties; and voter registration or get-out-the-vote campaigns. Generally, organizations or entities which receive federal funds by way of grants, contracts, or cooperative agreements do not lose their rights as organizations to use their own, private, non-federal resources for “political” activities because of or as a consequence of receiving such federal funds. These recipient organizations must thus use private or other non-federal money,

receipts, contributions, or dues for their political activities, and may not charge off to or be reimbursed from federal contracts or grants for the costs of such activities.

B. Grant officials or grant funded employees may not use official authority or influence or permit the use of a program administered by the grantee agency of which the person is an officer or employee to interfere with or affect the result of an election or nomination of a candidate or to achieve any other political purpose.

C. Grant-funded employees may not coerce, attempt to coerce, command, restrict, attempt to restrict, or prevent the payment, loan, or contribution of anything of value to a person or political organization for a political purpose.

D. Grant funds will not be used, either directly or indirectly, in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government, without the express prior approval of OOG and applicable federal funding agencies. If any non-grant funds have been or will be used in support of the enactment, repeal, modification, or adoption of any law, regulation or policy, at any level of government, it will notify OOG to obtain the appropriate disclosure form. E. Grant funds may not be used to employ, as a regular full-time or part-time or contract employee, a person who is required by Chapter 305 of the Government Code to register as a lobbyist. Furthermore, grant funds may not be used to pay, on behalf of the agency or an officer or employee of the agency, membership dues to an organization that pays part or all of the salary of a person who is required by Chapter 305 of the Government Code to register as a lobbyist.

F. Grant funds – whether expended by the grantee or by any subgrantee or subcontractor – will not be used for political polling. This prohibition regarding political polling does not apply to a poll conducted by an academic institution as a part of the institution’s academic mission that is not conducted for the benefit of a particular candidate or party.

G. As applicable, the grantee will comply with 31 USC § 1352, which provides that none of the funds provided under an award may be expended by the grantee to pay any person to influence, or attempt to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any Federal action concerning the award or renewal.

25. Best Practices for Collection and Use of Personally Identifiable Information (PII)

If Contractor collects Personally Identifiable Information (PII), they are required to have a publically-available privacy policy that describes standards in the usage and maintenance of PII they collect. DHS defines PII as any information that permits the identity of an individual to be directly or indirectly inferred, including any information that is linked or linkable to that individual. Recipients may also find the DHS Privacy Impact Assessments: Privacy Guidance and Privacy template as useful resources respectively. This requirement applies to all agreements being paid for with funds from the Office of the Governor.

The award recipient certifies it has written procedures in place to respond in the event of an actual or imminent breach (as defined in OMB M-17-12) of personally identifiable information (PII). The award recipient either 1) creates, collects, uses, processes, stores, maintains, disseminates, discloses, or disposes of PII (as defined in 2 C.F.R. 200.1) within the scope of an OVW (Office on Violence Against Women) grant-funded program or activity, or 2) uses or operates a Federal information system (as defined in OMB Circular A-130). The breach procedures include a requirement to report actual or imminent breach of PII to an OVW Program Manager (or for subrecipients the OOG Grant Manager) no later than 24 hours after an occurrence of an actual breach, or the detection of an imminent breach.

26. Prohibited Telecommunications and Video Surveillance Services and Equipment.

Contractor understands and acknowledges that under 2 CFR 200.216, the County is prohibited from using federal funds to procure, obtain, extend or renew a contract to procure or obtain covered telecommunications equipment or services, including telecom equipment produced by Huawei Technologies Company or ZTE Corp. (or subsidiaries or affiliates of such entities).

Contractor, therefore, certifies that they are in compliance with the John S. McCain National Defense Authorization Act for Fiscal Year 2019 (FY 2019 NDAA), Pub. L. No. 115-232 (2018), and that in the performance of this agreement, it will not provide equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

27. Prompt Payment.

The Contractor is required to pay its subcontractors performing work related to this Agreement for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from County. In addition, the Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work is satisfactorily completed.

28. Procurement of Recovered Materials.

Contractor must comply with Section 6002 of the Solid Waste Disposal Act, Pub. L. No. 89-272 (1965) (codified as amended by the Resource Conservation and Recovery Act, 42 U.S.C. section 6962). The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition.

29. Retention of Records

The Contractor agrees to maintain fiscal records and supporting documentation for all expenditures related to this Agreement pursuant to 2 CFR 200.333, UGMS, and state law. Contractor must retain, and will require its subcontractors of all tiers to retain, these records and any supporting documentation for a minimum period of not less than three (3) years after the date of termination or expiration of the Agreement or any litigation, dispute, or audit arising from the performance of the Agreement. Records related to real property and equipment acquired with grant funds shall be retained for three (3) years after final disposition. If requested by the Office of the Governor's Homeland Security Grant Division (HSGD), the County may direct the Contractor to retain documents for a longer period of time or transfer certain records to HSGD custody when it is determined the records possess longer term retention value.

30. Rights to Inventions and Copyrighted Material Made Under a Contract or Agreement.

Contractor is subject to the Bayh-Dole Act, 35 U.S.C. section 200, unless otherwise provided by law. Contractors are subject to the specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from federal financial assistance awards located at 37 C.F.R. Part 401 and the standard patent rights clause located at 37 C.F.R. Section 404.14.

Contractor agrees that the OOG and any federal funding agency that has funded work with a federal grant reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use (in whole or in part, including in connection with derivative works), for state (or Federal) purposes:

- A. Any work subject to copyright developed under an award or subaward; and
- B. Any rights or copyright to which a grantee or subgrantee or subcontractor purchases ownership with state (or Federal) support.

The OOG (and the federal funding agency) have the right to:

- A. Obtain, reproduce, publish, or otherwise use the data first produced under an award or subaward; and

- B. Authorize others to receive, reproduce, publish or otherwise use such data for state (or federal) purposes. 'Data' includes data as defined in Federal Acquisition Regulation (FAR) provision 52.227-14 (Rights in Data- general).

Contractor agrees to cooperate and provide County with all rights and data necessary for the OOG and federal funding agency to exercise their above-mentioned property rights to funded work.

31. SAFECOM

Any emergency communication equipment and its related activities provided as a part of this Agreement must comply with the SAFECOM Guidance for Emergency Communication Grants, including provisions on technical standards that ensure and enhance interoperable communications.

32. Termination for Cause and Termination for Convenience.

Contractor understands that all contracts in excess of \$10,000, including subcontracts, must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

33. Terrorist Financing.

Contractor must comply with E.O. 13224 and U.S. law that prohibit transactions with, and the provisions of resources and support to, individuals and organizations associated with terrorism.

34. Text Messaging While Driving.

Contractor is encouraged to adopt and enforce policies that ban text messaging while driving as described in E.O. 13513, 74 FR 51225 (Oct. 6, 2009), including conducting initiatives described in Section 3(a) of the Order when on official government business or when performing any work for or on behalf of the federal government.

35. Trafficking Victims Protection Act.

Contractor will comply with the requirements of Section 106(g) of the Trafficking Victims Protection Act (TVPA) of 2000, as amended (22 U.S.C. 7104) which prohibits grant award recipients or a sub-recipient from awarding funds to a private entity or individual who has (1) engaged in severe forms of trafficking in persons during the period of time that the award is in effect; (2) procured a commercial sex act during the period of time that the award is in effect; (3) used forced labor in the performance of the award or subawards under the award; or (4) engaged in acts that directly support or advance trafficking in persons as set forth in 22 U.S.C. § 7104(g)(4). Contractor shall inform County immediately upon receipt of any information from any source alleging a violation of a prohibition of the TVPA. Violation of this clause, may result in termination of this Agreement.

36. USA Patriot Act of 2001.

Contractor must comply with requirements of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT Act), which amends 18 U.S.C. Sections 175-175c.

37. Use of DHS Seal, Logo and Flags.

Contractor must obtain permission from DHS, prior to using the DHS seal(s), logos, crests or reproductions of flags or likenesses of DHS agency officials, including use of the United States Coast Guard seal, logo, crests or reproductions of flags or likenesses of Coast Guard officials.

38. Veteran Preference.

The Contractor shall give a hiring preference, to the extent practicable, to veterans (as defined in 5 USC Section 2108) who have the requisite skills and abilities to perform the construction work required under the contract. This subsection shall not be understood, construed or enforced in any manner that would require an employer to give preference to any veteran over any equally qualified applicant who is a member of any racial or ethnic minority, female, an individual with a disability, or former employee.

39. Whistleblower Protections.

Contractor must comply with the statutory requirements for whistleblower protections (if applicable) at 10 U.S.C Section 2409, 41 U.S.C. 4712, and 10 U.S.C. Section 2324, 41 U.S.C. Sections 4304 and 4310.

40. Non-Supplanting Requirement

Contractor certifies that federal funds shall not replace (supplant) funds that have been budgeted for the same purpose through non-federal sources.

41. Energy Policy and Conservation Act

Contractor must comply with the requirements of The Energy Policy and Conservation Act, Pub. L. No. 94-163 (1975) (codified as amended at 42 U.S.C. Section 6201 et seq.) which contain policies relating to energy efficiency that are defined in the state energy conservation plan issued in compliance with this Act.

42. Homeland Security Grant Program Performance Goal

Contractor shall demonstrate how the grant-funded project addressed the core capability gap associated with this project and identified in the Threat and Hazard Identification and Risk Analysis (THIRA) or Stakeholder Preparedness Review (SPR) or sustains existing capabilities as applicable. The capability gap reduction must be addressed in the Project Description for each project.

43. Disposition of Equipment

Contractor shall comply with all requirements pursuant to 2 C.F.R. Section 200.313 for the proper disposition of original or replacement equipment acquired under an award when the original or replacement equipment is no longer needed for the original project or for other activities currently or previously supported by DHS/FEMA. Contractor shall contact the County for instructions regarding the disposition of such equipment.

44. Copyright Notices Displayed

Contractor shall affix the applicable copyright notices of 17 U.S.C. Sections 401 or 402 and an acknowledgement of U.S. Government sponsorship (including the award number) to any work first produced under federal financial assistance awards.