

**ADDENDUM TO TERMS  
BETWEEN  
Thermo Electron North America LLC (“Seller”)  
AND  
County of Monterey (“Buyer”)**

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**Agreement No. 00588984**

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This Addendum to Buyer’s “Standard Agreement” (hereinafter referred to as the “Terms”) is made and entered into on August 18, 2023 (the “Effective Date”) by and between Buyer and Seller. Buyer and Seller may be referred to individually as a “Party” or collectively as the “Parties” herein.

NOW, THEREFORE, the Parties agree as follows:

**1. Section 8 “Indemnification”** is deleted in its entirety and replaced as follows:

“By Seller. Seller will indemnify, defend and save Buyer, its officers, directors, and employees from and against any and all damages, liabilities, actions, causes of action, suits, claims, demands, losses, costs and expenses (including without limitation reasonable attorneys’ fees) (“Indemnified Items”) asserted by another party against Buyer for (i) bodily injury to or death of persons or damage to tangible property to the extent caused by the negligence or willful misconduct of Seller, its employees, agents or representatives or contractors in connection with the performance of services under this Agreement; and (ii) claims that a Product infringes any U.S. patent, copyright or trade secret; provided, however, Seller’s liability under this Section does not extend to any such Indemnified Items caused by either (iii) the gross negligence or willful misconduct of Buyer, its employees, agents or representatives or contractors, (iv) by any third party, (v) use of a Product in combination with equipment or software not supplied by Seller where the Product alone would not be infringing, (vi) Seller’s compliance with Buyer’s designs, specifications or instructions, (vii) use of the Product in an application or environment for which it was not designed, or (viii) modifications of the Product by anyone other than Seller without Seller’s prior written approval. Buyer will promptly notify Seller in writing of any claim covered by Seller’s indemnification obligations hereunder. Seller may assume exclusive control of the defense of such claim or, at the option of the Seller, to settle the same. Buyer agrees to cooperate reasonably with Seller in connection with the performance by Seller of its obligations in this Section.

Notwithstanding the above, Seller’s infringement related indemnification obligations shall be extinguished and relieved if Seller, at its discretion and at its own expense (a) procures for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replaces or modifies the Product so that it becomes non-infringing, provided the modification or replacement does not adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. **THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER’S ENTIRE LIABILITY TO BUYER FOR, AND BUYER’S SOLE AND EXCLUSIVE REMEMDY IN RESPECT OF, THE CLAIMS DESCRIBED HEREIN.**

**2. Section 9 “Insurance”** is deleted in its entirety and replaced with the following:

“ For the term of a support plan and/or for the provision of on-site Services purchased hereunder, as applicable, Seller agrees to maintain and carry liability insurance in amounts set forth below with insurance companies rated A- or better by “BEST” rating services. Insurance includes (a) commercial general liability insurance for a limit of US\$2,000,000 (two million) for each occurrence and US\$4,000,000 (four million) in the aggregate, (b) Statutory workers’ compensation and employer’s

liability insurance for a limit of US\$1,000,000 (one million), (c) Automobile liability of US\$2,000,000 (two million) and (d) Umbrella coverage of US\$5,000,000 (five million). Upon request from Buyer related to applicable Services, Seller will provide to Buyer a certificate of insurance using the standard ACORD form to evidence the insurance coverage required herein.”

3. Section 14.01 “Independent Contractor” is modified to remove this sentence:

“In connection therewith, Contractor shall defend, indemnify, and hold County harmless from and any and all liability which County may incur because of Contractor’s failure to pay such taxes.”

4. Section 16.06 “Assignment and Subcontracting” and Section 16.07 “Successors and Assigns” are deleted in their entirety and replaced with the following:

“This Agreement may not be assigned or transferred without each Party’s prior written consent, which consent shall not be unreasonably withheld. Subject to each Party’s approval this Agreement will be binding upon and inure to the benefit of, and be enforceable by, each Party and its successors and assigns. Notwithstanding anything to the contrary, each Party has the right to disclose the terms and conditions of this Agreement to the extent necessary to establish rights or enforce obligations under this Agreement.”

Sections to be added

5. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE LIABILITY OF EITHER PARTY UNDER THESE TERMS AND CONDITIONS (WHETHER BY REASON OF BREACH OF CONTRACT, TORT, INDEMNIFICATION, OR OTHERWISE, BUT EXCLUDING LIABILITY OF SELLER FOR BREACH OF WARRANTY (THE SOLE REMEDY FOR WHICH IS PROVIDED UNDER THE PRODUCT AND SERVICES WARRANTIES HEREIN) SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LESSER OF (A) THE TOTAL PURCHASE PRICE THERETOFORE PAID BY BUYER TO SELLER WITH RESPECT TO THE PRODUCT(S) OR SERVICES GIVING RISE TO SUCH LIABILITY OR (B) ONE MILLION DOLLARS (\$1,000,000), PROVIDED HOWEVER, THAT THE FOREGOING LIMITATION DOES NOT APPLY TO LIABILITY FOR INFRINGEMENT OR MISAPPROPRIATION OF SELLER'S INTELLECTUAL PROPERTY. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS OR LOSS OF GOODWILL), REGARDLESS OF WHETHER IT (a) HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (b) IS NEGLIGENT.
6. Seller’s sole obligation with respect to the Services is to provide the quoted Services in a workmanlike manner and if Buyer provides notice of defect in Service within ninety (90) days of completion of such Services, Seller will, at its sole option, either reperform the Services without charge to Buyer or grant Buyer a credit for the amount paid by Buyer with respect to such Service. Seller warrants that the Products will operate or perform substantially in conformance with Seller's published specifications and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Product documentation, published specifications or package inserts (the "Warranty Period"). If a Warranty Period is not specified in Seller’s Product documentation, published specifications, or package inserts, the Warranty Period for new instruments is twelve (12) months from the date of shipment to Buyer; and for all other Products is ninety (90) days from the date of shipment. During the Warranty Period, Seller agrees to repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with Seller’s published specifications; provided that Buyer (a) promptly notifies Seller in writing upon the discovery of any covered defect in the Products, including the Product model and serial number (if applicable) and details of the warranty claim; and (b) after Seller’s review, Seller will provide Buyer with an RMA number and services data, which may include biohazard decontamination procedures and other Product-specific handling instructions. Then, if applicable, Buyer may return the defective Products to Seller with all costs prepaid by Buyer. Replacement parts may be new or refurbished, at the election of Seller. All replaced parts shall become the property of Seller. Shipment to Buyer of repaired or replacement Products will be made in accordance with

the delivery terms of this Agreement. Except for new consumable items manufactured and sold by Seller, this warranty expressly excludes all other consumable parts or components (e.g., bulbs, belts, cartridges, etc.) in the Products. If Seller elects to repair defective medical device instruments, Seller may, in its sole discretion, provide a replacement loaner instrument to Buyer as necessary for use while the instruments are being repaired.

Notwithstanding the foregoing, Products supplied by Seller that are obtained by Seller from an original manufacturer or third party supplier are not warranted by Seller; but Seller agrees to assign to Buyer any warranty rights in such Product that Seller may have from the original manufacturer or third party supplier, to the extent such assignment is allowed by such original manufacturer or third party supplier.

In no event shall Seller have any obligation to make repairs, replacements or corrections under the Warranty, in whole or in part, as the result of or with respect to: (a) use of the Products in a manner for which they were not designed; (b) improper storage and handling of the Products; (c) use of the Products in combination with equipment or software not supplied by Seller (d) shipping damage incurred en route to Buyer's site or because of moving equipment, in which case Seller will promptly provide a cost estimate for technical support to the consignee for filing claims to carriers for shipping damage; (e) flood, lightning, earthquake, tornado, hurricane or fire, bombing, armed conflict, malicious mischief, sabotage or other natural or man-made disasters; (f) normal wear and tear, physical abuse, misuse, sprinkler damage, electrical surge or abnormal power variation; (g) repairs, maintenance, or modifications made by anyone other than Seller trained personnel or without Seller's supervision and/or approval; (h) relocation and reinstallation of equipment; although upon request Seller will supervise the removing, crating, relocation and reinstallation of the Products at Seller's current Services rates; (i) maintenance or replacement of media (i.e., floppy disks, plotter supplies, etc.) whatever the reason for loss, failure or damage; (j) beta-site support; (k) operator training; or (l) repairing Product malfunctions if the fault is not with the equipment. If Seller determines that Products for which Buyer requested warranty services are not covered by this warranty, Buyer will pay or reimburse Seller for all costs of investigating and responding to such request at Seller's then prevailing time and materials rates. If Seller provides Services or replacement parts that are not covered by this warranty, Buyer shall pay Seller therefor at Seller's then prevailing time and materials rates.

ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN SELLER WITHOUT SELLER'S PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS NOT SUPPLIED BY SELLER, SHALL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS AND/OR SERVICES. THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT FOR SELLER TO REPAIR OR REPLACE A DEFECTIVE PRODUCT OR TO REPERFORM OR CREDIT THE PRICE OF DEFECTIVE SERVICES SHALL BE THE SOLE REMEDY OF BUYER FOR SUCH DEFECTIVE PRODUCTS OR SERVICES UNDER THIS AGREEMENT. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, OR NONINFRINGEMENT. SELLER DOES NOT WARRANT THAT THE PRODUCTS OR SERVICES ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

7. Seller retains all rights in, title to and ownership of (i) any and all software provided to Buyer under this Agreement, which is licensed, not sold, to Buyer, solely for the purposes of Buyer's use and operation of the Products; and (ii) all services deliverables provided by Seller under this Agreement, whether related to Products or otherwise.
8. Buyer acknowledges that each Product and any related services, software and technology, including technical information supplied by Seller or contained in documents (collectively "Items"), may be subject to export controls of the U.S. government and/or other governments. Such export controls may include, but are not limited to, the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the U.S. and their re-export from other countries and all other applicable laws, regulations, laws, treaties, and agreements relating to the export, re-export, and import of any Item. Buyer shall not export, re-export, distribute or supply any Item, directly or indirectly, to (i) any country, person or entity, in each case, without first obtaining from the U.S. government and/or other appropriate government agency any license required to do so lawfully; (ii) any person or organization in Cuba, Iran, North Korea, Sudan, Syria, or other country then the subject of a U.S. embargo, or any person or entity considered a part of the government of any such country; or (iii) any person or entity

who is involved in improper development or use of nuclear weapons, or of chemical/biological weapons (CBW) or missiles, or in terrorist activities. Buyer shall cooperate fully with Seller in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and shall indemnify and hold Seller harmless from, or in connection with, any violation of this Section by Buyer or its employees, consultants, agents and/or representatives.

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This Addendum and the Terms together form an agreement ("Agreement") between Buyer and Seller. The Agreement constitutes the entire understanding between the Buyer and Seller and shall not be amended, altered or changed except by a written agreement signed by the Parties hereto. In the event of a conflict between this Addendum and the Terms, the terms of this Addendum shall prevail. Any additional or conflicting terms and conditions to those in the Agreement, either written or verbal, are of no force and effect upon the Parties.

The Parties agree that this Agreement shall apply to all purchase orders issued by Buyer until July 31, 2026, whether or not such terms are included with or incorporated by reference in such orders.

IN WITNESS WHEREOF, the Parties have caused this Addendum to be duly executed on the date last signed by the Parties herein below.

**COUNTY OF MONTEREY**

<b>By:</b>	
<b>Name:</b>	Elsa M. Jimenez
<b>Title:</b>	Director of Health Services
<b>Date:</b>	

**THERMO ELECTRON NORTH AMERICA LLC**

<b>By:</b>	<small>DocuSigned by:</small> <i>Stephanie Glavan</i>
<b>Name:</b>	<small>D6BA6E10AD3B467...</small> Stephanie Glavan
<b>Title:</b>	Manager, Contract Administration
<b>Date:</b>	12/11/2023   12:13 PM PST

**COUNTY OF MONTEREY:**

Approve as to Form:

Signature: \_\_\_\_\_  
Deputy County Counsel

Date: \_\_\_\_\_

Approve as to Fiscal Provisions:

Signature: \_\_\_\_\_  
Auditor/Controller

Date: \_\_\_\_\_

DocuSigned by:  
*Katy Eeten*  
215F9E69D5B94E5...  
Katy Eeten

Supervisor, Contract Administration

12/11/2023 | 12:22 PM PST