

Brainlab, Inc.

Quotation QN-NMCSU-FAI-23

Setup Proposal

Pos.	Art.No.	Description	
PLATFORM			
1	18070	KICK NAVIGATION STATION	1
2	30038	ORIGIN DATA MANAGEMENT	1
KNEE ACCESSORIES			
3	B21505	KNEE ACCESSORY PACKAGE	1
		41866-77 FEMORAL AND TIBIAL CUTTING BLOCK ADAPTER UNIVERSAL	
	53101	POINTER ANGLED FOR HIP/KNEE	
	52410	REFERENCE ARRAY T-GEOMETRY X-PRESS	
	52411	REFERENCE ARRAY Y-GEOMETRY X-PRESS	
	52420	BONE FIXATOR 2-PIN X-PRESS (x2)	
	54932	PINDRIVER ADAPTER FOR AO COUPLING	
	54922	DISPOSABLE SCHANZ SCREW 3.2 MM X 100MM (10PCS)	
	52302	STERILIZATION TRAY KNEE REPLACEMENT	
IGS DISPOSABLES			
4	18071-50	DISPOSABLE STERILE MONITOR DRAPES FOR KICK (40 PCS)	1
5	41774	DISPOSABLE REFLECTIVE MARKER SPHERE (270 PCS)	1
ONSITE APPLICATION TRAINING - IMAGE GUIDED SURGERY			
6	81032-06	KNEE (1 DAY)	1
7	81033-03	CLINICAL CONSULTATION KNEE - 1 CASE	5
8	81000-70	IGS SERVICES	4
		EXTENDED/RENEWED WARRANTY PACKAGE KICK	
	89020-16	24/7 HOTLINE REMOTE SUPPORT	
	89020-17	PREVENTIVE MAINTENANCE INSPECTION	
	89020-19	REPAIR ON-SITE LABOR / TRAVEL	
	81006-03	REPAIR MATERIAL FOR KICK	
	89020-20	PRIORITY RESOURCE ALLOCATION	
9	50780	FREIGHT, INSURANCE AND FEES	1
10	81001-01	NAVIGATION SYSTEM INSTALLATION (1 MOBILE UNIT)	1
SUBTOTAL			\$122,705.00
TAX - 9.125%			\$11,196.83
SETUP TOTAL			\$133,901.83

Operating Proposal

Pos.	Art.No.	Description	Qty.	Single (USD/month)
KNEE				
11	B62025	KNEE NAVIGATION MONTHLY LICENSE (60 months) - DEPUY	1	\$1,210.00
		21000-01 NAVIGATION SOFTWARE KNEE ESSENTIAL DEPUY		\$1,076.90
		89029-01 24/7 HOTLINE REMOTE SUPPORT		
		89029-02 OR ASSISTANCE (ON AVAILABILITY) (x2)		
		89029-03 ON-SITE APPLICATION TRAINING		
		81015-13 SOFTWARE OBSOLESCENCE PROTECTION KNEE NAVIGATION		
		Discount \$133.10 Per Month		
SUBTOTAL				\$64,614.00
TAX - 9.125%				\$5,896.03
OPERATING SUBTOTAL				\$70,510.03
TOTAL				\$204,411.86



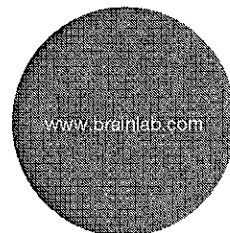
Brainlab, Inc.

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Westchester · IL 60154 · USA

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fax: +1 708 409 1619

CUSTOMER: County of Monterey,
doing business as
Natividad Medical Center
1441 Constitution Blvd
Salinas, California, 93906
United States



Westchester, March 17, 2015
Quotation QN-NMCSCU-FAI-23

Summary of quotation

Setup Proposal	122,705.00 USD (excl. tax)
Payment Terms:	See Brainlab Standard Terms and Conditions
Configuration	see section "Setup Proposal"
Operating Proposal	1,076.90 USD / month (excl. tax)
Term:	60 months
Payment Terms:	monthly in advance, see Brainlab Standard Terms and Conditions
Configuration:	see section "Operating Proposal"

A handwritten signature in black ink, appearing to read "Douglas Fairbanks", written over a horizontal line.

Douglas Fairbanks
Area Sales Manager Orthopedics
douglas.fairbanks@brainlab.com



Westchester, March 17, 2015
Quotation QN-NMCSCU-FAI-23

Shipment: DDP (Incoterms 2010)
Terms of Payment: See Brainlab Standard Terms and Conditions

The prices set forth in this quotation are valid for a period of 24 days as of its date of issue. The following 'Terms and Conditions' as attached hereto is/are hereby incorporated and form an integral part of this quotation: Standard Terms and Conditions-Brainlab, Inc.

Setup Proposal

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9	50780	FREIGHT, INSURANCE AND FEES	1
10	81001-01	NAVIGATION SYSTEM INSTALLATION (1 MOBILE UNIT)	1
TOTAL EXCL. TAX			122,705.00 USD



A handwritten signature in black ink, appearing to read 'Douglas Fairbanks'.

Douglas Fairbanks
Area Sales Manager Orthopedics
douglas.fairbanks@brainlab.com

Technical Quote Review done by

A handwritten signature in black ink, appearing to read 'T. Kroenung'.

Thomas Kroenung
Technical Quote Review Specialist IGS
thomas.kroenung@brainlab.com



Westchester, March 17, 2015
Quotation QN-NMCSCU-FAI-23

Term: 60 months
Shipment: DDP (Incoterms 2010)
Terms of Payment: See Brainlab Standard Terms and Conditions

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Operating Proposal

Pos.	Art.No.	Description	Qty.	Single (USD/month)	Total (USD/month)
K N E E					
11	B62025	KNEE NAVIGATION MONTHLY LICENSE - DEPUY	1	1,210.00	1,210.00
		21000-01 NAVIGATION SOFTWARE KNEE ESSENTIAL DEPUY			
		89029-01 24/7 HOTLINE REMOTE SUPPORT			
		89029-02 OR ASSISTANCE (ON AVAILABILITY) (x2)			
		89029-03 ON-SITE APPLICATION TRAINING			
		81015-13 SOFTWARE OBSOLESCENCE PROTECTION KNEE NAVIGATION			
		SUB-TOTAL			1,210.00
TOTAL (MONTHLY)					1,210.00
contract term discount for 60 months					-133.10
TOTAL EXCL. TAX (MONTHLY)					1,076.90

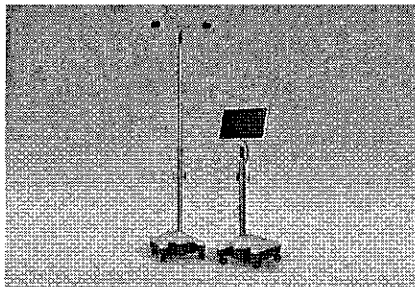
Technical Quote Review done by

Douglas Fairbanks
Area Sales Manager Orthopedics
douglas.fairbanks@brainlab.com

Thomas Kroenung
Technical Quote Review Specialist IGS
thomas.kroenung@brainlab.com

PLATFORM

1 | 18070 | KICK NAVIGATION STATION



Powerful and portable Image-Guided-Surgery station including a mobile display cart with separate mobile camera cart for flexible positioning of the infrared camera - featuring advanced optical, wireless passive marker tracking technology

- Total surgical control on a fingertip, accessible via 21.5" widescreen touch display
- Drapeable display allows operation within sterile field
- Excellent display quality with full HD resolution (1920x1080 pixels) without compromises due to touch interface (resistive technology)
- Small footprint of the display cart and separate camera cart including telescopic, pneumatic braking stand provide high set-up flexibility
- Infrared tracking camera with extended detection volume and laser pointer for quick and intuitive positioning
- Central "Home Button" ensures intuitive system control
- Connection panel for connectivity e.g. with surgical microscopes, endoscopes, ultrasound etc via analog video inputs (2 x CVBS, 1x S-Video) and analog/digital video output (1x DVI-I)
- Fast simultaneous access to e.g. PACS/hospital network and integration with e.g. C-Arms via 2x high-speed network connection (up to 1 Gbit/s each)
- Built in WLAN module for mobile wireless network communication to hospital access points (Wireless LAN 802.11b/g/n up to 300 Mbps - only available in specific countries)
- Powerful computer (Intel i5, 4 GB RAM memory and 160 GB storage)
- Direct patient data transfer from/to 6x USB
- Brainlab Session Sharing: viewing and control of Kick from Buzz
- Customer site pre-requisite for Brainlab Session Sharing: systems connected to local network infrastructure (minimum 100 Mbit/s, recommended 1 Gbit/s, effective network speed 40 Mbit/s, recommended maximum latency 2 ms)
- Intuitive Brainlab operating system for patient-centric data handling, application and display management
- Intuitive content management of available displays via "drag & drop" functionality
- Streamlined patient-centric access to DICOM and Brainlab xBrain image data from multiple sources (PACS, USB, Network)
- Unified search and load of patient image data from all available sources with optimized usability, including intelligent pre-fetching and buffering of patient image data for increased performance
- Ability to merge different patient data sets
- Export of treatment documentation (e.g. screenshots) and plans to network storage or USB
- HIPAA-compliant feature set including authentication, accountability log and automatic log-off

Medical Computer Unit of Display Cart

Power / Voltage	90VAC - 264 VAC
Frequency	47-64 Hz
Processor / Memory	Intel i5, 4 GB RAM memory and 160 GB storage
Graphic Card	Nvidia Quadro 600
Operating System	Microsoft Windows 7 (64-bit (Embedded Standard)
I/O Support	4x USB 2.0 2x 1 Gbit/s LAN (up to 1 Gbit/s each) Video Inputs (2 x CVBS, 1x S-Video) and Analog/Digital Video Output (1x DVI-I)

System Noise Level	WLAN: 802.11 b/g/n (up to 300 Mbps)
Certificates and Classification	< 45 dB (A) IEC 60601-1:2005 (3rd edition); NRTL compliance by ETL
Heat Emission	< 200 W

Touch Display

Panel Size	21.5"
Resolution	1920x1080 px
White Luminance	250cd/m2
Viewing Angle	160° horizontal, 160° vertical
Contrast Ratio	10:01
Dimensions	Width 540 mm Height 330 mm Depth 70 mm
Scan Frequency	60 Hz
Display Technology	resistive touch
I/O Support	2x USB 2.0
Heat Emission	< 60 W

Camera System

Physical Characteristics	Width 630 mm Height 90 mm Depth 145 mm
Weight	3 kg
Max Camera Height	2230 mm
Min. Camera Height	1325 mm
Tracking Distance	300 cm
Heat Emission	< 20 W

Camera Cart

Dimensions	Width 455 mm Height 1450 mm Depth 485 mm
Weight	19 kg

Display Cart

Dimensions	Width 455 mm Height 1550 mm Depth 485 mm
Weight	25.5 kg

Environmental Requirements

Temperature (Operation)	+10°C to +35°C
Temperature (Storage)	-10°C to +45°C
Humidity (Operation)	30 % to 76% non-condensing
Humidity (Storage)	10 % to 90% non-condensing
Pressure (Operation)	70 kPa to 106 kPa
Pressure (Storage)	50 kPa to 106 kPa

Cleanability Details

Disinfectant Type	Example
Alcohol-based	Meliseptol, Mikrozid AF Liquid
Alkylamine-based	Incidin Plus 2%
Active oxygen-based	Perform
Aldehyde/chloride-based	Antiseptica Kombi - Flächendesinfektion



2 | 30038 | ORIGIN DATA MANAGEMENT

Brainlab Origin operating system facilitating intelligent and automatic synchronization of data between platforms and offering easy access to all new software capabilities. Universal patient data management software that allows for import of patient data in DICOM format on Brainlab systems.

- Easy and intuitive user interface for streamlined access to patient data and applications
- Full control with support of touch gesture interaction as well as mouse and keyboard support
- Provides the same look and feel whether in the O.R. or office, while planning or navigating
- PACS access via DICOM "Query/Retrieve" (compatible to all major PACS systems)
- Import from PACS ("Query/Retrieve" and "Push"), USB, CD/DVD, Quentry and network
- Import of any modalities including CT, MR, PET/SPECT, X-ray
- Receipt of data via DICOM "Push"
- Selection of patient from patient list on PACS (C-FIND)
- Screenshots and video recordings in DICOM format (recording with article #25104 or #25105) can be sent to PACS (C-STORE)
- Intelligent export of screenshots (.png or DICOM) and video recordings (.mp4 or DICOM)
- Data export to different destinations (e.g. PACS, USB,...)
- Data import and export tools: media filter (CD, USB,…) and browsing of network folders
- Patient data management tools including new patient creation, merging and editing of patient data
- Patient pinning allows for manual pre-loading of DICOM images (e.g. all patients that are scheduled for O.R. 3 on Thursday) in order to reduce waiting times for PACS
- Support of DICOM worklist
- Group-based user rights
- Link to Brainlab remote support (iHelp)
- HIPAA-compliant feature set including authentication, accountability log and automatic log-off
- Generic license valid for all applications installed on system
- Until end of 2015: Includes related software updates and upgrades within terms of use - additional service costs occur if not installed remotely via iHelp
- Until end of 2015: Includes 24 hours, 7 days a week phone support hotline operated by technical professionals
- Until end of 2015: Includes training which will be delivered in the most appropriate format at the discretion of Brainlab including: remote training via Brainlab Learning Management System or onsite training at the customer facility

PACS requirements for optimal performance

- PACS should feature complete implementation of the DICOM query/retrieve protocol on study, series and instance level for optimal performance. Alternatively, operation on series and study level or study level only is possible resulting in loss of performance and fidelity of the user interface.
- PACS should allow for several parallel associations for optimal performance.
- DICOM data retrieved from a long-term archive should be cached for optimal performance.
- Recommended network connection speed of the client 1Gb/s with latency
- Recommended achievable download bandwidth from PACS 100Mb/s.

KNEE ACCESSORIES

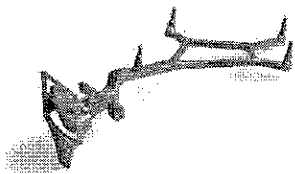
3 | B21505 | KNEE ACCESSORY PACKAGE

Knee Accessory Package includes:

41866-77 | FEMORAL AND TIBIAL CUTTING BLOCK ADAPTER UNIVERSAL

Tracking array enabling generic adaptation & interactive navigation of different femoral & tibial cutting blocks:

- Can be used for cutting blocks with slot thickness of minimum 1,0 mm to maximum 1,8 mm
- Specific adjustment mechanism for different slot sizes
- Instant navigation after adaptation with pre-calibrated geometry
- Wireless and autoclavable design for fast sterilisation
- Requires Reflective Marker Spheres for wireless navigation
- Not compatible with Ci knee 1.1.2 or Ci MITKR



53101 | POINTER ANGLED FOR HIP/KNEE

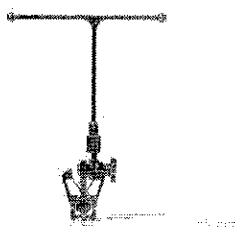
Standard instrument for the intra-operative registration of anatomical landmarks and surface point acquisition:

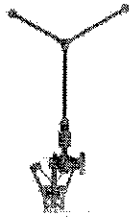
- Angled design for acquisition in less accessible anat. areas
- Spherical tip for sliding and continuous point acquisition
- Wireless and autoclavable design for fast sterilization
- Requires Reflective Marker Spheres for wireless navigation
- Contains an angled pointer and the corresponding gauge to be stored in sterilization tray
- Includes Gauge



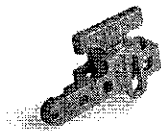
52410 | REFERENCE ARRAY T-GEOMETRY X-PRESS

- Includes t-geometry star and quick release module
- Quick-release functionality through special interface
- Wireless and autoclavable design enabling fast sterilization
- Requires "Reflective Marker Spheres" f. wireless navigation

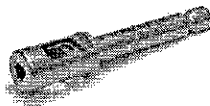



52411 | REFERENCE ARRAY Y-GEOMETRY X-PRESS

- Includes y-geometry star and quick release module
- Quick-release functionality through special interface
- Wireless and autoclavable design enabling fast sterilization
- Requires "Reflective Marker Spheres" f. wireless navigation


52420 | BONE FIXATOR 2-PIN X-PRESS

- Requires Screws (3-4 mm) for bone fixator attachment
- Wireless and autoclavable design enabling fast sterilization

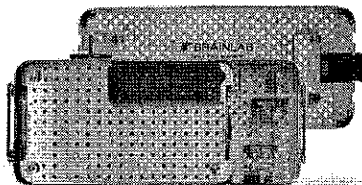

54932 | PINDRIVER ADAPTER FOR AO COUPLING

Adapter to allow easy and fast setup of 54922 - DISPOSABLE SCHANZ SCREW 3.2 MM X 100MM through standard AO coupling to any power tool.


54922 | DISPOSABLE SCHANZ SCREW 3.2 MM X 100MM (10PCS)

Disposable Schanz screws for easy bone fixation of Brainlab reference arrays:

- Bone preserving through Self-drilling mechanism
- High pitch thread for fast fixation and removal
- Easy and fast setup through 54932 ADAPTER FOR AO COUPLING
- To be used with 52420 - BONE FIXATOR 2-PIN X-PRESS.



52302 | STERILIZATION TRAY KNEE REPLACEMENT STERILIZATION TRAY KNEE REPLACEMENT

Allows easy storage and efficient sterilization (autoclaving) of all Brainlab Instruments for knee navigation:

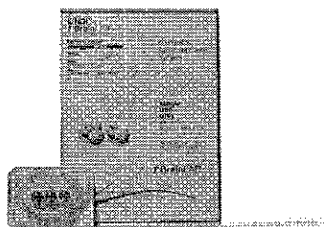
- Comfortable handling through easy opening and closing via 4 ergonomic quick release fasteners
- Easily portable with two ergonomic handles
- Compatible to standard sterilization containers (min. size: l x h x w = 531 x 129 x 240,5 mm)

IGS DISPOSABLES

4 | 18071-50 | DISPOSABLE STERILE MONITOR DRAPES FOR KICK (40 PCS)

Disposable sterile drapes to cover touchscreen display of Kick.

- Quantity: 40 pcs
- Disposable item



5 | 41774 | DISPOSABLE REFLECTIVE MARKER SPHERE (270 PCS)

From NDI, the authorized Brainlab partner for disposable reflective marker spheres. Approved by Brainlab, for use with all Brainlab IGS systems.

Localization sphere coated with IR-light, retro-reflective foil:

- Single use, ethylene oxide (ETO) pre-sterilized
- 90 units with 3 spheres per unit
- Increased OR efficiency due to omission of sterilization

ONSITE APPLICATION TRAINING -IMAGE GUIDED SURGERY

6 | 81032-06 | KNEE (1 DAY)

The Brainlab Onsite Application Training Program (OAT) is a two-hour training program for all members of a clinical team who utilize Brainlab VectorVision® CAS products. Onsite training offers participants the opportunity to gain a basic proficiency and comfort level in using CAS technology. Participants will use the equipment and software to demonstrate proficiency in OR setup, patient registration, planning, navigation, and basic troubleshooting for a navigated case.

Each one-day OAT purchase includes the following:

- 3) two-hour training sessions for staff and surgeons, maximum six participants per session
- CEU/CE accreditation
- Participant educational materials
- Travel and accommodations for Application Trainer

7 | 81033-03 | CLINICAL CONSULTATION KNEE - 1 CASE

On-site clinical support for a case with Brainlab equipment. Applicable to Knee, Knee Arthroscopy and Osteotomy cases. Facilitated by qualified and trained Brainlab Support Personnel.

Requires 48 hours advance notice.



IGS SERVICES

8 | 81000-70 | EXTENDED/RENEWED WARRANTY PACKAGE KICK

Brainlab will provide one year extended/renewed warranty package for one Kick navigation station including the services detailed below.
Notice that this package does not cover the EM module and its accessories.
Standard Terms and Conditions apply.

89020-16 | 24/7 HOTLINE REMOTE SUPPORT

24 hours, 7 days a week phone support hotline operated by technical professionals.

89020-17 | PREVENTIVE MAINTENANCE INSPECTION

Preventive maintenance inspection including the examination of the proper functioning of the system modules, and examination of products components according to Brainlab quality standards. A safety check of mechanical and electric devices is also performed.

89020-19 | REPAIR ON-SITE LABOR / TRAVEL

On-site visit facilitated by Brainlab Personnel, including any labor and travel required to eliminate possible equipment malfunctions.

81006-03 | REPAIR MATERIAL FOR KICK

Exchange of defective parts upon system failure including the shipping and handling of spare parts.

89020-20 | PRIORITY RESOURCE ALLOCATION

The Priority Resource Allocation ensures Customer is being assigned top priority by Brainlab in case of system failure. A team of Brainlab personnel will take steps to make sure Customer gets prompt attention to provide timely support for each required scenario.

9 | 50780 | FREIGHT, INSURANCE AND FEES

10 | 81001-01 | NAVIGATION SYSTEM INSTALLATION (1 MOBILE UNIT)

Brainlab hardware set up onsite, software installation off-site/on-site and tests including:

- Assembly of all hardware and computer components
- Simulation of the data transfer customer specific steps
- Verification of functionality, precision and safety of all complete software and hardware components
- Acceptance protocol according to quality system

KNEE

11 | B62025 | KNEE NAVIGATION MONTHLY LICENSE - DEPUY

Monthly license for navigation software for image-guided knee replacement surgery.

Grants the customer free access to all future updates and upgrades within the existing functionality for protection against software obsolescence as well as ongoing support of customers' clinical staff members by Brainlab Specialists.

Ongoing support of customers' clinical staff members by Brainlab Specialists; including, but not limited to:

2 x 89029-02 - OR Assistance (on availability) - per year

1 x 89029-03 - On-Site Application Training - per year



21000-01 | NAVIGATION SOFTWARE KNEE ESSENTIAL DEPUY

Workflow based navigation software for image-guided total knee replacement surgery. Supports intra-operative image-free acquisition of individual patient anatomy, guidance of existing surgical instrumentation for navigation of proximal tibia cut and distal femur resection as well as alignment of AP-resection; measured resection and computer-aided ligament balancing; cut verification for comparison of the plan with treatment results and documentation. Allows quantitative assessment of the biomechanical condition over the full range of motion.

Supported implants and instrumentations:

- LCS
 - LCS High Performance
 - LCS Complete Milestone
 - LCS Complete EGF
- Sigma Fixed Bearing
 - Sigma PS
 - Sigma CR
- Sigma Rotating Platform
 - Sigma PS
 - Sigma CR
 - Sigma PS150
 - Sigma CR150
- Sigma RP-F
- Attune

System Compatibility:

Software version 2.6.0 (DB 3.6.4 Rev 121) available on VV Sky, VV2, VV Compact (Workstation 6.0 & 6.01 with Windows XP SP3), Kolibri 2.0, Kolibri 2.01, Kolibri 2.02, Kolibri 2.03, Curve 1.0 (Windows 7 embedded 64) minimum 1 GB RAM required.

Localization of Software is available in: FR, JP

89029-01 | 24/7 HOTLINE REMOTE SUPPORT

24 hours, 7 days a week phone support hotline operated by technical professionals.

89029-02 | OR ASSISTANCE (ON AVAILABILITY)

On-site visit facilitated by Brainlab Personnel to provide OR staff support and assistance regarding Brainlab Products. This service will be provided upon availability of Brainlab field personal.

89029-03 | ON-SITE APPLICATION TRAINING

Individually scheduled onsite Customer training provided by Brainlab Personnel. This education service offers an affordable way to train all levels of clinical staff members on use of the Brainlab products.

81015-13 | SOFTWARE OBSOLESCENCE PROTECTION KNEE NAVIGATION

Brainlab provides an obsolescence protection package for the applications covered, including all software updates and upgrades within the existing functionality that may be released during the entire operating proposal term.

Standard Terms and Conditions-Brainlab, Inc.

1. DEFINITIONS AND APPLICATION

- 1.1. "Delivery" means (i) with respect to hardware, delivery of the Product, and (ii) with respect to Software, either remote delivery, delivery at Customer's site, or delivery via download. A Software activation key will be provided if applicable.
- 1.2. "Products" means all Software and hardware products set out in the Quote.
- 1.3. "Quote" means the quotation to which these Standard Terms and Conditions are attached.
- 1.4. "Services" means the services specifically set out in the Quote or performed as part of or in connection with a Product purchase, rental, or lease or an acquired Software license, such as, for example, Installation and warranty services.
- 1.5. "Software" means software to be delivered or made otherwise available by Brainlab and set out in the Quote.
- 1.6. "Term" means the time period set out in the Quote for either the provision of Operating Products or a Software license or for the provision of Services.
- 1.7. "Third Party Products" means Products manufactured by a third party and provided to Customer by Brainlab.
- 1.8. All Products and Services are furnished only on these terms and conditions and any exhibits hereto.
- 1.9. These standard terms and conditions are deemed to be accepted at the latest upon Delivery of the Products and/or performance of the Services.

2. QUOTE / ORDER CONFIRMATION

- 2.1. Brainlab's quotations are non-binding and constitute solicitations for offers to purchase, rent, lease or license only. Brainlab agrees to be bound by the quoted prices for a period of ninety (90) days.
- 2.2. A Quote may contain Software, hardware Products and/or Services. Hardware Products listed in a Setup Proposal Section of the Quote are offered for sale. Hardware Products listed in an Operating Proposal Section of a Quote are offered on a term basis ("Operating Products") for the Identified Term. Software is always licensed, subject to the license conditions set out in Section 14 below and further license conditions set out in the Quote, if any.
- 2.3. After receipt of Customer's purchase order, Brainlab may conduct a technical contract review in order to review compatibility of the Products and Services with Customer's existing equipment. Subsequently, Brainlab may send Customer a final order confirmation or provide Customer with a new amended quotation according to clause 2.1 above.
- 2.4. A final and binding contract comes into force no sooner than upon receipt by Customer of Brainlab's final order confirmation.
- 2.5. If Customer requests any changes to the configuration covered by the contract after receipt of Brainlab's order confirmation, Brainlab shall reasonably consider such request, however additional costs incurred due to the changes shall be borne by Customer.
- 2.6. Brainlab shall be entitled to appoint subcontractors to perform any Services.

3. THIRD PARTY PRODUCTS

- 3.1. If Customer enters into any contracts with third parties that are technically related to the Products, Brainlab assumes no responsibility for such contracts with third parties or the products covered thereunder.
- 3.2. Brainlab warrants compatibility with Third Party Products or other third party products explicitly listed in the Product manual or other technical documentation only in the version which is current on the date of the order confirmation.
- 3.3. Brainlab shall not be liable for any damages whatsoever occurred due to or in connection with any future changes of any third party products. This applies, for example, to orthopedic or other implants, microscopes, magnetic resonance units, and CT scanners.
- 3.4. Customer shall make reasonable efforts to make third party products available during Installation for any required acceptance or compatibility testing as reasonably required by Brainlab.
- 3.5. Unless otherwise agreed to by Brainlab, Customer shall be solely responsible for the installation and maintenance of Software that is indicated for use on third party computer hardware.

4. PRICING / PRICE INCREASES

- 4.1. Unless otherwise indicated in the Quote, prices as set forth in Brainlab's quotations are DDP (delivered duty paid). Insurance, freight, taxes and other charges are included in the total Quote price.
- 4.2. Unless otherwise stated in the Quote, Brainlab reserves the right to adjust any periodic fees, including but not limited to monthly, quarterly or yearly Software subscription or Service fees or fees set out under the Operating or Setup Proposal Section of the Quote, if any ("Periodic Fees"). Such price changes become effective in the contract year following the price adjustment, provided that Brainlab has notified Customer of these changes at least four (4) months in advance.

5. PAYMENT TERMS

- 5.1. Payment terms and/or letter of credit requirements are set out in the Quote.
- 5.2. If no payment terms are set out in the Quote, the following shall apply: For total amounts exceeding \$15,000.00 USD (or an equivalent amount in any other currency) incl. sales tax, terms of payment are as follows:
 - 30% net of total within 3 days from receipt by customer of Brainlab's final order confirmation
 - 60% net of total within 10 days from date of Delivery
 - 10% net of total within 10 days from date of acceptance of the Product.

For purposes of this Section, for Products, particularly but not limited to Software, where no acceptance procedure is performed, acceptance shall be deemed to have occurred simultaneously with Delivery. Payments of up to \$15,000.00 USD (or an equivalent amount in any other currency) incl. sales tax shall be due and payable in full within 14 days from date of invoice.

- 5.3. In the event Customer desires to pay the aggregate amount of the Periodic Fees (such amount being the Periodic Fee multiplied by the number of months in the Term) ("Aggregate Fee") in one lump-sum, Customer shall notify Brainlab of such intention and the Aggregate Fee shall be due according to the payment terms set forth in Section 5.2.
 - 5.4. In case shipment or Delivery is delayed due to circumstances caused by or within the responsibility of Customer, Delivery shall be deemed performed, and the payment due upon Delivery shall be due and payable, 30 days after Brainlab reports ability to deliver. Customer shall bear and indemnify Brainlab for any and all additional costs caused by the delay.
 - 5.5. In case of delay of execution of the acceptance protocol due to circumstances caused by or within the responsibility of Customer, payment due upon acceptance of the Product shall be due and payable in full upon the earlier of six months after Delivery or acceptance. Customer shall bear and indemnify Brainlab for any and all additional costs caused by the delay.
 - 5.6. For Services, if no payment terms are set out in the Quote, payments shall be made annually in advance. The first payment shall be due within 10 days from receipt by Customer of the order confirmation.
 - 5.7. If a security deposit is set out in the Quote ("Security Deposit"), it shall be payable within ten (10) days of the date of the related invoice. The Security Deposit may be commingled by Brainlab with other funds and shall not bear interest. If Brainlab applies the Security Deposit to Customer's obligations, Customer shall immediately restore the same. Upon Customer's full performance of all of Customer's obligations, Brainlab shall, at the request of Customer, return any remaining Security Deposit to Customer.
 - 5.8. The first of any applicable Periodic Fees shall be due and payable within ten (10) days of execution of the acceptance protocol or first patient treatment, whichever occurs earlier. Thereafter, the Periodic Fee shall be due and payable before the third day of the respective payment periods indicated in the Quote.
 - 5.9. Customer shall pay as directed by Brainlab or reimburse Brainlab upon demand for all taxes, including but not limited to sales, use, or property taxes (exclusive of federal and state taxes based on or measured solely by Brainlab's net income), fees, charges or assessments, of whatsoever kind, whether based on the fee, rent or levied, assessed or imposed upon the Products or upon or in respect of the manufacture, purchase, delivery, ownership, leasing, use, return or other disposition of the Products, now or hereafter levied, assessed or imposed under the authority of a federal, state or local taxing jurisdiction, regardless of when and by whom payable. In the event Customer is a tax exempt entity, Customer shall notify Brainlab in writing and provide written evidence of such status.
 - 5.10. All payments not made when due pursuant to this agreement shall be subject to late charges of the lesser of (i) one and one-half percent (1.5%) per month of the overdue amount or (ii) the maximum amount permitted under applicable law.
 - 5.11. In case of partial Delivery by Brainlab, Customer shall pay an appropriate part of the amount due, e.g. if one or more separable components remain to be delivered, Customer shall pay the amount due for all components that have been delivered. The amount due shall be paid in full if the components that have not been delivered are of minor value and do not affect the Product's suitability for safe clinical use.
 - 5.12. Customer shall not be entitled to offset claims without the prior written consent of Brainlab.
 - 5.13. Customer agrees to provide all information reasonably requested by Brainlab to carry out credit approval.
- ### 6. SITE PLANNING / CUSTOMIZATION
- 6.1. The Customer is responsible for the site and technical setup and for meeting any regulatory, structural, or radiation prerequisites as they may be required by Brainlab, or any applicable law. Validation or assessment of such prerequisites shall be at Customer's expense. The readiness for installation, which may require formal validation 10 days prior to installation, may be a condition for beginning the installation at Brainlab's reasonable discretion.
 - 6.2. Customer shall obtain any permits, approvals, licenses, certifications, local or otherwise, that may be required for installation or operation of the Products. If any such requirement is expected to impact Customer's readiness for taking delivery or installation or require changes to the contract, Customer shall notify Brainlab without delay.
 - 6.3. If applicable and included with the Products, Services may include site planning with a design phase for, including but not limited to, layout, electrical wiring, network integration, and routing.
 - 6.4. The formal end of the design phase, if any, is defined as the project milestone "Design Freeze". The Design Freeze document sets out the layout of the Product installation. It is decisive, for example and without limitation, for network specifications, power, grounding, required wiring etc. In the event that Customer requires changes to any item set out in the Design Freeze document, Brainlab and Customer will review the impact of such changes. If Brainlab, in its sole discretion, decides to initiate a change request process, any additional costs that are caused by such changes will be borne by Customer and the project schedule

- shall be adjusted to reflect any additional time necessary to make such changes. For the sake of clarity, Brainlab shall in no case be obligated to make any changes to the items specified in the Design Freeze document.
- 6.5. Customer must approve the Design Freeze in writing.
 - 6.6. In the event of a conflict between the signed Design Freeze and any other previous drawings, tender specifications or other specifications, the Design Freeze shall prevail.
 7. **DELIVERY**
 - 7.1. Brainlab shall use commercially reasonable efforts to deliver the Products within three (3) months from receipt by Customer of Brainlab's final order confirmation or at an agreed date.
 - 7.2. If Delivery is delayed due to Act of God, strike, regulatory difficulties, or due to unforeseen circumstances, Brainlab shall be entitled to postpone performance for the duration of the obstruction and an additional appropriate time to resume performance and/or to make partial shipments or provide partial Services.
 - 7.3. Meeting the scheduled Delivery dates is contingent upon Customer providing proper and reasonable cooperation in a timely manner, including but not limited to the provision of technical support, precise and complete data and information on all aspects related to the Delivery and installation of the Products.
 - 7.4. If the date of Delivery is postponed by Customer or if Delivery is delayed for reasons within the responsibility of Customer, Brainlab may, at its reasonable discretion, ship the Products to storage or, if shipment is already in progress, also revert shipment to Brainlab's premises. Section 5.4. above applies. Any additional costs caused thereby will be borne by Customer, including but not limited to transport and/or storage related costs and insurance. At the reasonable discretion of Brainlab, the Customer shall provide an adequate warehouse with appropriate storage environment (e.g. climate controlled and insured). Brainlab reserves the right to claim further damages.
 - 7.5. Customer shall arrange for barrier-free transportation of Brainlab shipping crates as reasonably required from the Customer's receiving area (including adequate parking space for transportation vehicle) to the installation site or to the storage room, and, if applicable, from the storage room to the installation site. Unless otherwise agreed between the parties, Customer shall provide a loading dock with capabilities for non-power tailgate delivery. Costs for necessary traffic control, rigging and transportation equipment or labor, any adjustments made to doorframes, hallways, ceilings, or other facility structures, as well as dust and noise protection related to existing equipment shall be borne by the Customer.
 8. **TRANSPORTATION AND RISK OF LOSS**
 - 8.1. Brainlab shall be entitled to insure the Products for transportation at Customer's expense. Appropriate means of transportation to Customer's site will be chosen by Brainlab.
 - 8.2. Upon Delivery of the Products to Customer's premises, or, if Delivery is delayed due to circumstances caused by or within the responsibility of the Customer, upon Brainlab's reporting ability to deliver, Customer hereby assumes and shall bear the entire risk of loss of, theft of, damage to, or destruction of the Products from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence to the Operating Products shall relieve Customer from its obligation to pay Periodic Fees or to perform any other of its obligations hereunder. Customer shall promptly notify Brainlab in writing of any Casualty Occurrence to Operating Products and shall, at its sole cost and expense, within twenty (20) days cause the repair of any Operating Products to first class condition. Notwithstanding the foregoing, if Brainlab deems repair unfeasible, then, at Brainlab's option, Customer, at its sole cost and expense shall (i) procure from Brainlab the replacement of damaged or stolen Operating Products, or (ii) pay to Brainlab the sum of the following: 1) all sums then due to Brainlab under this agreement 2) the unpaid balance of the Fees attributable to the remainder of the applicable Term and 3) twenty percent (20%) of the total of all costs to Brainlab of and relating to purchasing and making available the Operating Products, plus taxes and other charges.
 - 8.3. For Operating Products, Customer shall, at its sole cost and expense, obtain and maintain commercial general liability insurance and property insurance (including coverage against a Casualty Occurrence in an amount equal to at least the full replacement value of the hardware included in the Operating Products, based on the then current list price) satisfactory to Brainlab covering both personal injury and property damage arising out of or in connection with the use or operation of the Operating Products with limits of at least \$1,000,000 USD per occurrence and \$3,000,000 USD in the aggregate. Customer shall name Brainlab or Brainlab's assignee as additional insured on the commercial general liability and as loss payee on the property insurance. In addition, the policies shall grant a waiver of subrogation on behalf of Brainlab. Customer shall provide to Brainlab a certificate of insurance evidencing such insurance coverage. Customer hereby irrevocably appoints Brainlab as Customer's attorney-in-fact to make claims for, receive payment of, and execute and endorse all documents, drafts or checks for a Casualty Occurrence or returned premiums under any Insurance policy required herein.
 9. **INSTALLATION / ACCEPTANCE / ACCEPTANCE PROTOCOL**
 - 9.1. Installation will be performed (i) remotely or (ii) by a Brainlab Service Engineer or other party designated by Brainlab within three (3) months after Delivery or within a period otherwise agreed upon or set out in the Quote. On-site installation will generally require no more than two visits of a Brainlab engineer, unless otherwise specified by Brainlab. If one visit is sufficient, or if more than two visits will be required, Brainlab will notify Customer in advance.
 - 9.2. If completion of the installation is delayed for more than six (6) months after Delivery due to circumstances caused by or within the responsibility of Customer, including but not limited to false or incomplete technical information regarding Customer's equipment or premises, or incorrect or missing data, Customer shall be charged any and all additional costs resulting from such delay. In addition, Brainlab shall no longer be obligated to perform the installation.
 - 9.3. If more than the specified number of visits of a Service Engineer are required due to circumstances caused by or in the responsibility of Customer, Customer shall bear the additional costs.
 - 9.4. Up to ten (10) man hours of engineer's overtime work, i.e. work outside Brainlab's normal working hours (Mo-Fri, 8 a.m. - 5 p.m.), during installation are included in the price indicated in the Quote. Any additional working hour or fraction thereof outside normal working hours requested by Customer will be charged to Customer according to Brainlab's then current price list.
 - 9.5. After complete installation and prior to final acceptance, one of Brainlab's Service Engineers will test the Products, either at Customer's premises or remotely, to evaluate its capability of functioning according to the specifications. At least one representative of Customer shall be present during this procedure. The acceptance may also have an extended scope covering use of Products in conjunction with third party products.
 - 9.6. After successful performance of the acceptance test, Customer shall accept the Product and sign Brainlab's acceptance protocol to verify acceptance. Customer agrees that signature of a present healthcare professional shall be legally binding on Customer. The acceptance protocol shall become part of the contract. It shall be provided to the Customer prior to installation upon request.
 - 9.7. Acceptance shall not be refused because of minor problems that do not affect the suitability for safe clinical use. Acceptance shall be deemed to have occurred, and the final payment shall be due and payable, if Customer refuses acceptance due to such minor problems.
 - 9.8. The Product may not be used for patient treatment before the applicable acceptance test has been performed successfully and the acceptance protocol has been signed.
 - 9.9. If Customer performs any kind of patient treatment before signing the applicable acceptance protocol, the Product shall be deemed accepted and payment of the last installment shall be due.
 - 9.10. Customer shall be solely responsible for effectiveness, correctness, cost and timely implementation of any clinical and physics setup-procedures, including but not limited to sterilization of non-sterile surgical instruments or acquisition and documentation of radiation beam data, as applicable.
 10. **EXAMINATION AND NOTIFICATION OF DEFECTS**
 - 10.1. Customer shall inspect the packaging and the Products immediately upon Delivery and shall report any damage to the shipping agent without delay.
 - 10.2. During the acceptance test, Customer shall examine the Product in the presence of a Brainlab Service Engineer. Any defect or missing part shall be listed in the acceptance protocol.
 - 10.3. Brainlab will not accept complaints relating to malfunctions or missing items that have not been reported as set out above, unless the defect was indiscernible at the time of the examination.
 - 10.4. In case such defect occurs later, Customer will notify Brainlab within 14 days after occurrence. Otherwise, the Products shall also be deemed accepted regarding this defect.
 11. **TRAININGS / OR ASSISTANCE**
 - 11.1. The contract may also include a specified number of trainings / OR assistance sessions. If the Quote contains Operating Products, all training and OR assistances included as part the description of such Products shall occur within the Term, unless otherwise agreed to by Brainlab. Upon expiration or termination of the Term, Customer shall no longer be entitled to such training and OR assistances. If the Term is for less than one (1) year and Customer renews the Term for any additional period, Customer shall not be entitled to the additional training and OR assistance which is automatically included in the description of the Brainlab Product being renewed. Customer may purchase additional training and/or OR assistance.
 - 11.2. After successful performance of training for Brainlab Products, the training acceptance protocol must be signed by an authorized representative of the Customer, if applicable.
 - 11.3. No Products may be used before the applicable training has been performed and any applicable training acceptance protocol has been signed.
 - 11.4. Customer warrants that the Products will be operated only by trained personnel.
 12. **WARRANTY**
 - 12.1. Brainlab warrants that the Products are free from defects in material and workmanship under normal use and in substantial compliance with operational features of Brainlab's published specifications at the time of sale. The warranty period shall be one (1) year beginning (i) 6 months after delivery, (ii) 3 months after installation, (iii) acceptance of the purchased goods, or (iv) treatment of the first patient, whichever occurs first.
 - 12.2. In the event that any malfunctions occur, Customer shall immediately cease using the Product and inform Brainlab hereof without delay.

- Customer shall not resume use of the Product before Brainlab has given notice that the malfunction has been eliminated.
- 12.3. Brainlab will, at its own discretion, repair or replace defective parts or Products.
- 12.4. During the warranty period, Customer may request up to ten (10) hours of engineer's overtime work for Service visits. Any additional working hour or fraction thereof outside normal working hours requested by Customer will be charged to Customer according to Brainlab's then current price list.
- 12.5. The quality of Products is to be measured exclusively by the given specifications which are hereby incorporated in the contract. The specifications are subject to change without notice as far as such change is not material and the suitability for the intended use is not reduced.
- 12.6. In the interest of conservation of scarce materials, Products, including repair or replacement parts or components, may contain remanufactured parts. Such parts are subject to the same high standards of quality control applied to other parts and are covered by this warranty.
- 12.7. THIS LIMITED WARRANTY IS EXPRESSLY IN LIEU OF AND EXPRESSLY EXCLUDES ALL OTHER EXPRESS OR IMPLIED WARRANTIES INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY AND OF FITNESS FOR A PARTICULAR PURPOSE, COMMERCIAL PRACTICE, USE, OR APPLICATION.
- 12.8. Notwithstanding anything to the contrary contained herein, Brainlab does not warrant that the Software will be error-free or bug-free or that the use of the Software will be uninterrupted. In addition, except as otherwise stated herein, the Software is provided without any additional warranties.
- 12.9. Notwithstanding the one (1) year warranty period referenced in Section 12.1, repair or replacement parts ("Spare Parts") provided during the warranty carry the same warranty set forth in Section 12.1 for the unexpired portion of the original warranty period. Spare Parts provided by Brainlab under a purchased service contract are covered for the unexpired portion of the service contract period.
- 12.10. Any original parts removed and/or replaced during any repair process shall become the property of Brainlab.
- 12.11. Customer's claims are only valid when made in writing.
- 12.12. Customer shall bear the costs for any disposable parts needed for use of the Products, as well as any further costs of operation.
- 12.13. No representation is made as to the accounting validity, adequacy or compliance with the standards set forth in the criteria found within, but not limited to, the industry accounting standards as defined by the Financial Accounting Standards Board (FASB), Generally Accepted Accounting Principles (GAAP), the International Accounting Standards Board (IASB), or any other accounting standard defined by an independent third party or government agency. If desired, Customer should consult a Certified Public Accountant (CPA) and/or attorney before entering into this Agreement.
- 13. WARRANTY EXCLUSIONS AND PERFORMANCE OF SERVICE**
- 13.1. Any warranty is excluded and, further, Brainlab shall not be obligated to perform any Services in case of:
- general wear;
 - accident;
 - lack of proper care;
 - use of Products that is not in compliance with Brainlab's manuals, instructions for use and a reasonable degree of care or failure to use Brainlab systems under normal or specified operating conditions and environment;
 - use of Products in combination with devices, parts of devices, or accessories that have not been expressly cleared by Brainlab for use with such Products;
 - maintenance or repair of Products that have not been authorized by Brainlab;
 - unauthorized modification or alteration of Products;
 - failure of Customer to immediately report any malfunction of a Product or continuous use of the Product after occurrence of any such malfunction;
 - faults, failures or damages caused by intentional or negligent behaviour; or
 - circumstances beyond Brainlab's control, including but not limited to force majeure, acts of God, power and/or environmental failures.
- 13.2. Customer shall allow Brainlab free access to the Products, including online access if remote service is performed. This shall, in particular, not be made contingent on the limitation of Customer's liability. Customer shall offer a suitable workplace, including access to a telephone if needed. Brainlab shall use this telephone line exclusively to perform the Services.
- 13.3. Customer shall ensure safe conditions at the location of the Products. Particularly, Customer shall inform Brainlab of existing safety regulations that are relevant for Brainlab personnel.
- 13.4. Customer and Brainlab shall mutually agree on dates and times for Service visits at least 48 hours in advance. This shall not apply to Service provided on a time and material basis, where more advance notice may be required.
- 13.5. Brainlab will provide Services Monday through Friday from 8.00 am until 5.00 pm. Services provided at other times will be charged to the Customer as overtime unless otherwise agreed.
- 13.6. In the event that a Service, installation or other appointment is cancelled due to reasons within Customer's responsibility, Customer shall inform Brainlab at least 24 hours in advance.
- 13.7. In the event that Customer fails to notify Brainlab in due time, Brainlab shall be entitled to charge Customer for all costs reasonably incurred with regard to the appointment.
- 13.8. Brainlab shall respond to Customer reports of malfunctioning Products by phone, fax or email within no more than 24 hours by phone call. If the malfunction cannot be eliminated by phone call, the dispatch of spare parts as well as maintenance and repair will normally be initiated within one working day after the problem analysis by phone, pending availability of personnel and material. Notwithstanding the foregoing, in the event the defective Product is the Brainlab Dash System, or any component or accessory thereto, Customer shall ship such defective Product to Brainlab for replacement or repair. Customer shall properly package the Dash Product so as to avoid damage during transit and shall ship the Dash Product with a reputable carrier and shall provide to Brainlab the applicable tracking information upon shipment.
- 14. INTELLECTUAL PROPERTY, SOFTWARE LICENSES**
- 14.1. All rights to patents, trademarks, and any other intellectual property shall remain the property of Brainlab, its affiliates and/or its licensors, as applicable. Brainlab and/or its affiliates, suppliers and/or licensors presently owns and will continue to own all right, title, and interest in and to the Software and its source code, and any and all copyrights, trademarks, trade names, logos and other proprietary rights in and to the Software and any other materials provided to or otherwise made available to Customer hereunder, and all worldwide intellectual property rights embodied herein.
- 14.2. Brainlab grants Customer a limited, non-exclusive, non-transferable license to use any Software. Software available for download from a Brainlab website may be used solely in accordance with the respective intended use. Software delivered with or integrated in hardware products may solely be used in conjunction with such hardware products and for its intended use. Software is provided for the Term (if provided on a leased, rented or subscription basis), solely for use at the location indicated in the Quote for such Software, or the hardware with which such Software is integrated, and for such number of concurrent users as indicated in the Quote. If no Term is indicated in the Quote for either the Software or the hardware product that it is integrated with, then the Software license is perpetual, subject to end of life provisions. If no geographic limitation is made, then Software may be accessed and used worldwide in accordance with applicable law and export regulations. If the Quote does not indicate a permitted number of concurrent users, then the Software may be used by one user at a time.
- 14.3. Customer hereby accepts any further license conditions for Software that may be required by third party manufacturers or licensors in so far as such conditions are commonly used or reasonably acceptable to Customer. Brainlab will make such additional license conditions available to Customer upon request.
- 14.4. All title and interest in any Software provided to Customer shall remain with Brainlab, its affiliates and/or its licensors, as applicable. Customer shall not copy, modify or reverse engineer Software and shall prevent third party access to the Software.
- 14.5. The Software under this Agreement is commercial computer software as that term is defined in 48 C.F.R. 252-227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation and other technical data subject to these terms as specified in 48 C.F.R. 12.212 (Computer Software) and 12.211 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If acquired by or on behalf of any agency within the Department of Defense ("DOD"), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202-3 of the DOD FAR Supplement ("DFAR") and its successors. This U.S. Government Rights clause is in lieu of, and supersedes, any other FAR, DFAR, or other clause or provision that addresses Government rights in computer software or technical data under this Agreement.
- 15. OWNERSHIP AND RETENTION OF TITLE**
- 15.1. Brainlab shall retain title to any Products that are sold until payment is made in full and all claims are settled.
- 15.2. In the event that the Setup Proposal Section of a Quote provides for the payment of Periodic Fees, then title to the Products set out in such Setup Proposal Section shall pass to Customer upon payment of no less than all of the Periodic Fees.
- 15.3. If third parties take up steps to levy execution upon or otherwise dispose of the Products, Customer shall immediately notify Brainlab. If Customer fails to do so in due time Customer will be held liable for any damages caused.
- 15.4. The Operating Products shall at all times be and remain the sole and exclusive property of Brainlab notwithstanding that the Operating Products may now be, or hereafter become, in any manner affixed or attached to, or embedded in, or permanently resting upon real property. Customer shall have no right, title or interest therein or thereto except as to the use thereof according to their intended use. Customer shall not permit its rights or interests hereunder to be subject to any lien, charge or encumbrance and shall keep the Operating Products free and clear of any and all liens, charges and encumbrances which may be levied against or imposed upon Customer for whatever reason.
- 15.5. Customer shall not remove any labeling affixed to the Products.
- 15.6. Customer, at its sole cost and expense, shall maintain the Operating Products in first class condition, normal wear and tear excepted.

Customer shall keep the Operating Products safe and secure in Customer's possession and control at Customer's premises. At any reasonable time Brainlab or its agents may inspect the Operating Products.

- 15.7. Without the prior written consent of Brainlab, Customer shall not make any alterations, additions or improvements to any Products, whether provided on a term basis or sold. In any event, Customer shall, at its cost and expense, reverse any alterations, additions or improvements made before returning the Operating Products. If not done, all alterations, additions or improvements shall be deemed accessions thereto, shall belong to and immediately become the property of Brainlab and Customer shall remain liable and responsible for the costs to bring the Operating Products back into compliance with its original condition. Brainlab shall invoice the Customer accordingly. For Operating Products which consist of a dedicated computer workstation provided by Brainlab, or which reside on a dedicated computer workstation provided by Brainlab, Customer shall not install any third party software or programs on the dedicated computer workstation.
- 15.8. In the event any transaction with respect to any Product sold or provided hereunder is qualified or deemed to be a secured loan, Customer hereby grants to Brainlab a security interest in such Products which shall secure the performance of all of Customer's obligations of any kind whatsoever, whenever originated, to Brainlab. Customer authorizes Brainlab or its designee, and Brainlab reserves its right, to file a Uniform Commercial Code financing statement without Customer's signature, in form and content and from time to time as Brainlab deems proper, listing Customer as a lessee or debtor. Customer represents that it has identified or will correctly identify to Brainlab its exact legal name, state of incorporation, and location of its chief executive office.
- 15.9. Upon termination or expiration of the Term or this Agreement, Customer shall return the Operating Products to Brainlab and the license for any Software included with the Operating Products shall expire. Customer shall remove all protected health information from the Operating Products prior to returning to Brainlab. Brainlab shall be entitled to deduct from the Security Deposit, if applicable, any amounts due for any damage to the Operating Products. In the event the damages exceed the Security Deposit, Customer shall pay to Brainlab the exceeding amount of such damage within ten (10) days of receipt of written notice thereof. Customer will be liable and responsible for any damages incurred by Brainlab due to a delay by Customer in returning the Operating Products to Brainlab. In the event Customer does not immediately return the Operating Products upon termination or expiration of this agreement, Customer shall continue to incur and be liable and responsible for any and all Periodic Fees (or pro-rations thereof, if applicable) and taxes until the Operating Product is returned to Brainlab. Customer shall be liable and responsible for all costs associated with the removal and disposal of the Operating Products, such amounts to be due net ten (10) days of the date of invoice issued to Customer after removal and disposal of the Operating Products.
- 16. TERM AND TERMINATION**
- 16.1. The Term for the provision of Operating Products shall commence after acceptance or sixty (60) days after Delivery of the Operating Products, whichever occurs first. At least sixty (60) days prior to the expiration of the Term, Customer shall provide Brainlab with written notice of its intent regarding the end of term options. Customer shall indicate in its notice of intent whether Customer desires to (i) allow the Agreement to expire and return the Operating Products and allow the license for any Software included to expire; (ii) extend or renew this Agreement; or (iii) purchase the Operating Products and procure an ongoing license to any associated Software. If Customer desires to renew or extend this Agreement or purchase the Operating Products, if available for purchase, the parties will meet together to negotiate the renewal term and renewal fees or the purchase price, as applicable. If the parties are able to reach an agreement, (a) these terms and conditions shall continue to apply; (b) Term shall mean the Initial Term plus the extension or renewal time period; and/or (c) with respect to a purchase, no warranty will be provided. If the parties are unable to come to an agreement, this Agreement will not be renewed.
- 16.2. A Software license Term shall commence upon Delivery of the Software according to Section 1.6 above; In the event that Software is installed on corresponding Brainlab Product hardware, then the Term shall commence upon acceptance of such hardware, or sixty (60) days after Delivery of the Software and hardware, whichever occurs first.
- 16.3. Service shall be provided for a minimum Term of one (1) year, unless a longer Term is specified in the Quote, in which case such longer Term shall apply. This shall not apply to service provided on a time and material basis.
- 16.4. In case of permanent obstructions to Delivery of a Product, Brainlab shall have the right to terminate the underlying contract or license in part or in whole. Brainlab will promptly inform Customer about the obstructions and, in the event of termination of the contract or license, will reimburse Customer any payments already made for unavailable parts.
- 16.5. If Delivery obstructions last for a period of more than six months, Customer may terminate the underlying contract with respect to the unavailable parts. Customer may terminate the entire contract only if Customer cannot be reasonably expected to have an interest in partial Delivery without the unavailable parts.
- 16.6. Brainlab may terminate the provision of Operating Products, Term-based Software licenses or any other ongoing contractual relationships if

Customer's property becomes subject to levy of execution, seizure, or the like, or if Customer is in default of payment for more than one month.

- 16.7. Notwithstanding the foregoing, either party shall have the right to terminate the agreement before its fulfillment in its entirety and with immediate effect a) for the provision of Operating Products, Term-based Software licenses or any other ongoing contractual relationships, if there is a material breach by the other party not remedied within thirty (30) days of notice thereof; and b) for all Products: (i) if the other party becomes subject to voluntary or involuntary bankruptcy, receivership, or related proceedings; or (ii) at a party's dissolution. Statutory provisions regarding termination without notice shall not be restricted by the foregoing.
- 16.8. If Brainlab terminates this Agreement under Sections 16.6. or 16.7, Brainlab shall have the right, to the extent permitted by applicable law, to do any one or more of the following: (i) declare the Agreement in default, whereupon an amount equal to the present value of the entire unpaid balance of the Periodic Fees (the Periodic Fee multiplied by the remaining periods) plus any other sums and/or damages, is immediately due and payable, (ii) pursue any remedy at law, in bankruptcy or in equity, proceeding by court action or otherwise; (iii) repossess or take possession of the Operating Products or financed Products, together with all additions, replacements and attachments, wherever such Operating Products or financed Products may be located, and for such purposes Brainlab and/or its agents may enter upon any premises of or under the control or jurisdiction of Customer or any agent of Customer, without any liability for doing so, and take the Products therefrom. Customer hereby expressly waives any and all rights to any form of notice, demand, legal process and/or judicial hearing prior to any such taking or repossession. Customer also expressly waives, and indemnifies Brainlab against, any damages, costs and expenses specifically including reasonable attorney's fees in any way relating to or caused any such entry and/or repossession. Customer agrees to make such Products available to Brainlab at such location as Brainlab may reasonably specify. Upon such repossession by or return to Brainlab of the affected Products, all rights of Customer in such Products shall terminate; (iv) deactivate any Software licenses; and/or (v) hold, scrap or use any such repossessed or returned Products for any purpose whatsoever, or sell same at a public or private sale, or re-finance the same for such a term and payment as shall be solely determined by Brainlab, or hold the Products for future sale or re-leasing, solely for the account of Brainlab. In the event the provision of the Operating Products is terminated, such termination shall not affect any financing of any Products and such amounts shall remain due and payable by Customer.
- 16.9. Customer hereby waives any right to require Brainlab to sell, lease, rent or otherwise use any repossessed or returned Products in mitigation of damages.
- 16.10. Notwithstanding anything to the contrary contained herein and/or in the Quote, Brainlab shall have the right to terminate an ongoing agreement, in whole or in part, in the event that one or more of the Products that are covered under such agreement reach the Brainlab or original equipment manufacturer designated "end of life" or otherwise are no longer offered commercially by Brainlab or the original equipment manufacturer. Upon the effective date of termination under this subsection, Brainlab shall refund to Customer a pro-rated amount of the paid amount, reflecting the amount due for the unused portion of the agreement. Brainlab shall have no obligation to perform Services or deliver parts for Products declared "end of life" beyond the end of life date, which will be communicated well in advance to the Customer.
- 16.11. Should Customer not agree to a price increase as set out in Section 4.2 above, then Customer may terminate its ongoing agreement with Brainlab by giving at least three (3) months written notice before the end of the then current contract period.
- 16.12. Customer shall not be released from its obligations under this Agreement until the payment of all unpaid amounts, which would include but not be limited to all amounts due for delivered Products and all Periodic Fees incurred prior to termination. All of the foregoing applies notwithstanding any remedies which Brainlab may have under applicable law.
- 16.13. In the event that an automatic renewal of the Term is set forth in the Quote, then all conditions shall continue to apply for any renewal period. Should the Customer wish to prevent an automatic renewal, then the underlying agreement must be terminated by giving Brainlab written notice at least sixty (60) days before the expiration of the then current Term.
- 16.14. In addition to any sums due hereunder, CUSTOMER AGREES TO PAY BRAINLAB'S COLLECTION AND LEGAL EXPENSES AND REASONABLE ATTORNEYS' FEES AS DAMAGES, NOT AS COSTS, in all proceedings arising under this Agreement, including without limitation in, exercising any of Brainlab's rights or remedies hereunder, protecting any of Brainlab's interests hereunder, in arbitration, and in counterclaims on which Brainlab prevails.
- 16.15. All rights and remedies of Brainlab hereunder shall be cumulative and not alternative.
- 17. LIMITATIONS OF LIABILITY AND INDEMNIFICATION**
- 17.1. Brainlab shall not be liable for delays in performance due to Acts of God, strike, regulatory difficulties, or due to unforeseen circumstances. The same applies if the delay occurs at Brainlab's suppliers, their sub-suppliers, or other sub-contractors.
- 17.2. The total liability of Brainlab shall not exceed any payment received for the respective Brainlab Product contributing to the loss or damage

- claimed. The foregoing shall apply to any and all claims, including but not limited to tort claims.
- 17.3. Brainlab (and its affiliates) shall not be liable for any loss of use, revenue or anticipated profits, loss of business, loss of stored or transmitted data, interruption of service, or for indirect, incidental, unforeseen, special, punitive or consequential damages arising out of or in connection with this agreement or the sale or use of Brainlab's products, whether in any action in warranty, contract, tort (including without limitation, negligence or strict liability) arising out of or in any connection with the use of, or the inability to use, the products.
- 17.4. In no event shall Brainlab's liability hereunder exceed the actual loss or damage sustained by Customer.
- 17.5. Brainlab shall not be liable for any damage caused by (i) the use of purchased goods before performance of the acceptance test according to Section 9 above; (ii) the use, operation, service, modification of Brainlab products contrary to relevant manuals, written warnings, automated warnings, or instructions of Brainlab personnel; (iii) the use of Brainlab products in conjunction with third party products, unless this use has been expressly authorized in writing by Brainlab; and (iv) the use of any product supplied by Brainlab as a convenience to the Customer that is not manufactured by Brainlab and is not generally offered by Brainlab.
- 17.6. With respect to bodily injury or death to third parties, Brainlab's liability shall be restricted to an equitable proportion as reflects its relative fault in relation to Customer's contribution to the injury or death of the third party.
- 17.7. Customer agrees to defend, indemnify and hold harmless Brainlab from and against any and all liabilities, judgments, awards, settlements, losses, damages and expenses in connection with any third party claim, suit, or other action arising from (i) the negligence and willful misconduct of the Customer or its directors, officers, or employees; (ii) use of the Brainlab products prior to completion of the applicable acceptance by anyone other than Brainlab personnel; (iii) use, operation, service, modification of the Brainlab products contrary to relevant manuals, written warnings, automated warnings, or instructions by Brainlab personnel; (iv) use of the Brainlab products in conjunction with third party products, unless the use has been expressly authorized in writing by Brainlab; (v) use of any product supplied by Brainlab as a convenience to Customer and that is not manufactured by Brainlab and is not generally offered by Brainlab; or (vi) an infringement of third party rights by any actions or omissions of Customer, including but not limited to the disclosure of user data or patient data, by way of example, when using Quentry. All other rights, including but not limited to damage claims by Brainlab, shall remain unaffected.
- 18. EXPORT CONTROL**
- 18.1. Brainlab shall not be liable for any delay in Delivery or any inability to deliver due to export restrictions. In this case, Brainlab may cancel the contract and shall not be liable for any damages arising of or in connection with such cancellation.
- 18.2. Brainlab advises all customers that export regulations may apply to the resale of the delivered Products. In addition, Products delivered by Brainlab may contain US components (including but not limited to hardware, software, technology) in which case compliance with US regulations may be required. Customer shall ensure compliance with all export regulations applicable to the re-export of the delivered Products.
- 19. CONFIDENTIALITY, REGISTRATION, DATA PROTECTION**
- 19.1. Customer shall keep in confidence all information, including but not limited to technical data, product descriptions, and any other information which is readily and reasonably identifiable as confidential based on its nature and/or the circumstances of its disclosure. For clarification only, this shall include but not be limited to information provided verbally. Such information shall not be disclosed to any third parties or employees, except for employees who are directly involved in the operation of the Products on a need to know basis.
- 19.2. For the improvement of Products and customer support Brainlab shall be entitled to collect statistical data stored on the Products. This data will be stored anonymously and used exclusively for internal purposes.
- 19.3. Brainlab and Customer undertake to observe the applicable data protection regulations.
- 19.4. Customer agrees that Brainlab may remotely access the Products at Customer's site within the scope of this agreement, and may process and store data in order to perform the remote Services. Customer shall prevent accidental access to patient data and other protected data and/or, as applicable, obtain the written approval of patients regarding the possibility of access to their data by Brainlab in the course of the performance of Services.
- 19.5. Certain Brainlab Products require a single personal registration of each authorized health care professional or administrator using the Product, including the user's location. Customer warrants the correctness of the information entered and Brainlab shall grant access to the technology subject to validation of such information. This registration information is deemed confidential information and governed by the terms of this Section 19.
- 19.6. Brainlab is entitled to disable or otherwise restrict the access to Brainlab Products, including but not limited to deletion of data, whenever Brainlab has reasonable evidence that Customer is in violation of Sections 14 or 19.1.
- 20. PROTECTION OF ENVIRONMENT**
- 20.1. Brainlab shall dispose of any Product packing free of charge and in compliance with applicable regulations.
- 20.2. Upon end of use, Customer shall dispose of the Products (other than Products which are returned to Brainlab) at its own costs pursuant to any applicable regulations. Brainlab shall not be required to take back the Products or Third Party Products for disposal.
- 21. APPLICABLE LAW / ARBITRATION / PARTIAL INVALIDITY/ASSIGNMENT**
- 21.1. Customer shall comply with all applicable local, state, national and foreign laws, treaties, regulations and third-party rights, including, without limitation, those related to data privacy (e.g. HIPAA), international communications, the transmission of technical or personal information, and government regulations.
- 21.2. These terms and conditions as well as all contractual and other legal relationships between the parties shall be governed by the laws of the State of Illinois, USA. Any claim or controversy arising out of or relating to these standard terms and/or any other legal relationship between the parties shall be settled by arbitration in Chicago, Illinois in accordance with the arbitration rules of the American Arbitration Association. The dispute shall be heard and determined by one arbitrator, unless any party's claim exceeds USD 1 million, exclusive of interest and attorneys' fees, in which case the dispute shall be heard and determined by three arbitrators. Language of the arbitration shall be English. The arbitration tribunal shall not award punitive damages. The arbitration shall be final and binding, shall be the sole and exclusive remedy regarding any and all claims and counterclaims presented, and may not be reviewed by or appealed to any court except for enforcement.
- 21.3. Nothing in this agreement shall prevent Brainlab from seeking injunctive relief or other legal remedy to prevent unauthorized copying, disclosure, use, retention, or distribution of Brainlab's intellectual property or confidential information.
- 21.4. Brainlab shall have the exclusive right to bring legal action for failure to pay for Products and Services furnished in the courts of Brainlab's headquarters.
- 21.5. If any part of the terms and conditions is held void or unenforceable, such part will be treated as separable, leaving valid the remainder of these terms and conditions. The invalid clause will be replaced by the valid clause that comes closest to the commercial intention of the invalid clause.
- 21.6. Brainlab may freely assign this Agreement or its right or obligations under this Agreement to any affiliate, successor-in-interest, or third party. Customer may not assign this Agreement or its rights or obligations thereunder without the prior written consent of Brainlab.

Addendum to Standard Terms and Conditions – Brainlab, Inc.
Between
County of Monterey d/b/a Natividad Medical Center, and
Brainlab, Inc.

This Addendum amends, modifies, and supplements the Standard Terms and Conditions – Brainlab, Inc. ("Terms") attached to Quote No. QN-NMCSCU-FAI-22 ("Quote") issued by Brainlab, Inc. ("Brainlab") to the County of Monterey, d/b/a Natividad Medical Center ("Customer"). This Addendum has the full force and effect as if set forth within the Terms. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the Terms, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Terms.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree that the Terms will be amended, modified, and supplemented as follows:

I. Section 2.3, Quote / Order Confirmation

Section 2.3 is hereby deleted in its entirety and replaced with the following:

"2.3. Brainlab conducts a technical quote review in order to review compatibility of the Products and Services with the End Customer's existing equipment. If required, Brainlab will provide Customer with a new amended quotation according to clause 2.1 above."

I. Section 2.5, Quote / Order Confirmation

The following is hereby added to the end of Section 2.5:

"Any such changes to the configuration after Brainlab has issued the final order confirmation to Customer shall be agreed upon by both parties in writing."

II. Section 2.6, Quote / Order Confirmation

The following is hereby added to the end of Section 2.6:

"Notwithstanding any such subcontracting, Brainlab shall continue to be liable for the performance of all requirements of this Agreement."

III. Section 4.2, Pricing/Price Increases

Section 4.2 is hereby deleted in its entirety and replaced with the following:

"4.2. Any periodic fees, including but not limited to monthly, quarterly or yearly Software subscription ("Periodic Fees") shall be held firm for the Term."

IV. Section 5.1, Payment Terms

Section 5.1 is hereby deleted in its entirety and replaced with: "Intentionally Omitted."

V. Section 5.2, Payment Terms

Section 5.2 is hereby deleted in its entirety and replaced with the following:

"5.2. Payment terms shall be as follows:

- Following Monterey County Board of Supervisors' approval of Quote No. QN-NMCSCU-FAI-20 and issuance by Brainlab of a final order confirmation, 30% net of total within 30 days of receipt by County Auditor-Controller of invoice certified for payment by the NMC Contracts Administrator. The NMC Contracts Administrator shall certify such invoice within five days of receipt.
- Following date of delivery of Products to Customer, 60% net of total within 30 days of receipt by County Auditor-Controller of certified invoice. The NMC Contracts Administrator shall certify such invoice within five days of receipt.

- Following date of Customer's acceptance of the Products, 10% net of total within 30 days of receipt by County Auditor-Controller of certified invoice. The NMC Contracts Administrator shall certify such invoice within five days of receipt.

For purposes of this Section, for Products, particularly but not limited to Software, where no acceptance procedure is performed, acceptance shall be deemed to have occurred simultaneously with Delivery."

VI. Sections 5.4 – 5.5, Payment Terms

Sections 5.4 and 5.5 are hereby deleted and replaced with the following:

"5.4 In case shipment or Delivery is delayed due to circumstances caused by or within the responsibility of Customer or the End Customer, Delivery shall be deemed performed 30 days after Brainlab reports ability to deliver; thereafter, Brainlab shall submit a Delivery invoice to Customer. Payment due upon Delivery shall be due and payable within 30 days of receipt by County Auditor-Controller of certified Delivery invoice. The NMC Contracts Administrator shall certify such invoice within five days of receipt.

5.5. In case of delay of execution of the acceptance protocol due to circumstances caused by or within the responsibility of Customer or End Customer, payment due upon acceptance of the Product shall be due and payable in full upon the earlier of six months after Delivery or acceptance; thereafter, Brainlab shall submit the acceptance invoice to Customer.

VII. Section 5.8, Payment Terms for Periodic Fees

Section 5.8 is hereby deleted and replaced with the following:

"Brainlab shall submit such invoices for Periodic Fees on a monthly basis. NMC shall certify the invoice, and shall promptly submit such invoice to the County Auditor-Controller for payment. County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice. The NMC Contracts Administrator shall certify such invoice within five days of receipt."

VIII. Section 5.10, Payment Terms

Section 5.10 is hereby deleted in its entirety and replaced with: "Intentionally Omitted."

IX. Sections 6.3-6.6, Site Planning Customization

Sections 6.3 – 6.6 are hereby deleted in their entireties and replaced with: "Intentionally omitted."

X. Section 7.4, Delivery

The last two (2) sentences in Section 7.4 are hereby deleted.

XI. Section 7.5, Delivery

The first sentence of Section 7.5 is hereby deleted and replaced with the following:

"Customer shall ensure that there is adequate space for transportation of Brainlab shipping crates as reasonably required from the Customer's receiving area (including adequate parking space for transportation vehicle) to the installation site or to the storage room, and, if applicable, from the storage room to the installation site."

XII. Section 8.1, Transportation and Risk of Loss

The first sentence in Section 8.1 is hereby deleted and replaced with the following:

"Brainlab shall insure the Products for transportation at Customer's expense, and the cost of such insurance shall be included in the Quote.

XIII. Section 8.2, Transportation and Risk of Loss

The last two sentences in Section 8.2 are hereby deleted so that the Section now reads:

"8.2. Upon Delivery of the Products to the End Customer's premises, or, if Delivery is delayed due to circumstances caused by or within the responsibility of the Customer or the End Customer, upon Brainlab's reporting ability to deliver, Customer hereby assumes and shall bear the entire risk of loss of, theft of, damage to, or destruction of the Products from any cause whatsoever ("Casualty Occurrence"). No Casualty Occurrence to the Operating Products shall relieve Customer from its obligation to pay Periodic Fees or to perform any other of its obligations hereunder."

XIV. Section 8.3, Transportation and Risk of Loss

Section 8.3 is hereby deleted and replaced with the following:

"8.3. The County certifies that it maintains a program of insurance and self-insurance that covers its activities in connection with Quote No. QN-NMCSCU-FAI-20 as follows: Commercial General Liability Self-Insurance. The County shall maintain self-insurance with a self-insured retention of one million dollar (\$1,000,000) and coverage of three million dollars (\$3,000,000) in the aggregate.

The coverage referred to above shall be documented with a letter of self-insurance provided by the County of Monterey. Such a provision shall only apply, however, in proportion to and to the extent of the negligent acts or omissions of the County, its officers agents, and/or employees. The County, following the Board of Supervisors' approval of Quote No. QN-NMCSCU-FAI-20, shall furnish Brainlab with a Certificate of Insurance or **Letter of Self-Insurance** evidencing compliance with all requirements. Certificate shall further provide for thirty (30) days advance written notice to Brainlab of any modification, change or cancellation of any of the above insurance coverages."

XV. Section 8.4, Transportation and Risk of Loss

A new Section 8.4 is hereby added as follows:

"8.4 Evidence of Coverage:

Prior to commencement of this Agreement, the BRAINLAB shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained.

Insurance Coverage Requirements: Without limiting Brainlab's duty to indemnify, BRAINLAB shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial general liability insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Business automobile liability insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

Workers' Compensation Insurance, If BRAINLAB employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease."

XVI. Section 9.3, Installation/Acceptance/Acceptance Protocol

The following is added to the end of Section 9.3: "Labor rates will be charged at Brainlab's then current price. As of the Effective Date of the Quote, the normal hourly labor rate is \$380.00 and the overtime hourly labor rate is \$470.00."

XVII. Section 9.4, Installation/Acceptance/Acceptance Protocol

The following is added to the end of Section 9.4: "As of the Effective Date of the Quote, the normal hourly labor rate is \$380.00 and the overtime hourly labor rate is \$470.00."

XVIII. Sections 12.14-12.15, Warranty

New Sections 12.14 – 12.15 are hereby added as follows:

"12.14. Brainlab represents and warrants that it has the right to grant the licenses granted to Customer hereunder and that to its knowledge, the software does not infringe upon or violate the United States patent rights of any third party and does not infringe upon or violate the copyright, patent, trade secret, or other intellectual property right of any third party.

12.15. Viruses and Disabling Mechanisms. Brainlab shall use commercially reasonable measures to screen the Software prior to installation to avoid introducing any virus or other destructive programming that are designed (1) to permit unauthorized access or use by third parties to the software installed on Customer's systems, or (ii) to disable or damage Customer's systems. Brainlab shall not knowingly insert into the Software any code or other device that would have the effect of disabling or otherwise shutting down all or any portion of the software. Brainlab shall not knowingly invoke such code or other device at any time, including upon expiration or termination of this Agreement for any reason. Notwithstanding the foregoing, the software licensed hereunder is provided on a subscription basis. Upon expiration or termination of the subscription term, Customer shall no longer have access to such software."

XIX. Section 13.9, Warranty Exclusions and Performance of Services

A new Section 13.9 is hereby added as follows:

"13.9. Brainlab shall abide by Customer's vendor credentialing processes and procedures, including sign-in procedures."

XX. Section 14.6, Intellectual Property, Software Licenses

A new Section 14.6, is hereby added as follows:

"Brainlab agrees to defend, indemnify, and hold harmless Customer and its directors, officers, employees, members, subsidiaries and successors-in-interest from and against any claim, action, proceeding, liability, loss, damage, cost, or expense, including, without limitation, arising out of any claim by a third party that Customer's authorized use of the Brainlab products provided under this Agreement infringes a third party's United States patent, copyright, trademark, trade secret or other intellectual property rights (collectively, "IP Claims"), Customer. Customer agrees to (i) give Brainlab prompt written notice of such IP Claim; and (ii) allow Brainlab to control, and fully cooperate with Brainlab in, the defense and all related negotiations. Brainlab shall not enter into any stipulated judgment or settlement that purports to bind Customer without Customer's express written consent, which shall not be unreasonably withheld or delayed. If one or more Products become or are likely to become the subject of an infringement IP Claim or are believed by Brainlab to infringe, then, in addition to defending the IP Claim and paying any damages and attorneys' fees as required above, Brainlab shall, at its option and in its sole discretion, either (A) promptly replace or modify Products, without loss of material functionality or performance, to make them non-infringing or (B) promptly procure for Customer the right to continue using the Products

pursuant to the Quote and Terms. Any costs associated with implementing either of the above alternatives will be borne by Brainlab. If after using commercially reasonable efforts Brainlab is unable to provide one of the foregoing remedies, Customer shall have the right to terminate this Agreement with no further liability to Brainlab, and Brainlab shall refund to Customer all sums paid by Customer for the infringing Products, prorated based on a five (5) year useful life. Brainlab will have no liability for any IP Claim: (a) based upon the combination, operation or use of any products with any third party hardware or software not supplied by Brainlab where such infringement would not have occurred but for such combination, operation or use; (b) based upon alteration or modification of the products, except to the extent such modification or alteration is authorized and approved in writing by Brainlab; or (c) based upon the use of a version of a product other than the then-current version if infringement would have been avoided with the use of the then-current version if acquired by Customer from Brainlab. The rights granted to Customer under this Section shall be Customer's sole and exclusive remedy for any infringement by the products and/or any breach of Section 12.14."

XXI. Section 15.8, Ownership and Retention of Title

Section 15.8 is hereby deleted in its entirety and replaced with: "Intentionally Omitted."

XXII. Section 16.11, Term and Termination

Section 16.11 is hereby deleted in its entirety and replaced with: "Intentionally Omitted."

XXIII. Section 16.12, Term and Termination

Section 16.12 is hereby deleted in its entirety and replaced with the following:

"Customer shall not be released from its obligations under the Quote and Terms until the payment of all unpaid undisputed amounts, which would include but not be limited to all undisputed amounts due for delivered Products and all Periodic Fees incurred prior to termination. All of the foregoing applies notwithstanding any remedies which Brainlab may have under applicable law."

XXIV. Section 16.13, Term and Termination

Section 16.13 is hereby deleted and replaced with the following:

"This Agreement shall not automatically renew."

XXV. Section 16.14, Term and Termination

Section 16.14 is hereby deleted in its entirety and replaced with: "Intentionally omitted."

XXVI. Section 16.15, Term and Termination

Section 16.15 is hereby deleted in its entirety and replaced with the following:

"Except as expressly stated otherwise, all rights and remedies of Brainlab and Customer hereunder shall be cumulative and not alternative."

XXVII. Section 16.16, Term and Termination

A new Section 16.16 is hereby added as follows:

"Notwithstanding any other provision of these Terms, if Federal, State or local government terminates or reduces its funding to the County of Monterey for services that are to be provided under this Quote and Terms, Customer, in its sole and absolute discretion after consultation with Brainlab, may elect to terminate this Quote and Terms by giving written notice of termination to Brainlab effective immediately or on such other date as Customer specifies in the notice. Alternatively, Customer and Brainlab may mutually agree to amend the Quote and Terms in response to a reduction in Federal, State or local funding. Customer

represents and warrants that by issuing a purchase order against this Agreement, Customer has funds appropriate for the purchase."

XXVIII. Section 17.1, Limitations of Liability and Indemnification

Section 17.1 is hereby deleted and replaced with the following:

"Brainlab shall not be liable for delays in performance due to Acts of God, strike, regulatory difficulties, or due to unforeseen circumstances."

XXIX. Section 17.2, Limitations of Liability and Indemnification

Section 17.2 is hereby deleted and replaced with the following:

"Brainlab shall procure and maintain insurance policies with such coverages and in such amounts and for such period of time as required by and set forth in this Quote and Terms. Except for a claim subject to Brainlab's express indemnification obligations in Section 17, a breach by Brainlab of Section 19, or a breach of the mutually agreed upon Business Associate Agreement:

(a) To the fullest extent permitted by law, Brainlab's total liability to County for any and all injuries, claims losses, expenses or damages whatsoever arising out of or in any way related to this Quote and Terms from any cause or causes including but not limited to Brainlab's negligence, errors, omissions, strict liability, breach of contract or breach of warranty (hereafter "Claims") shall not exceed \$500,000.

XXX. Section 17.3, Limitations of Liability and Indemnification

The following is hereby added to the first sentence of Section 17.3:

"Except for a claim subject to Brainlab's indemnification obligations in Section 17, a breach of Section 19, or a breach of the mutually agreed upon Business Associate Agreement,"

XXXI. Section 17.4, Limitations of Liability and Indemnification

Section 17.4 is hereby deleted and replaced with: "In no event shall either party's liability hereunder exceed the actual loss or damage sustained by the other party."

XXXII. Section 17.6, Limitations of Liability and Indemnification

Section 17.6 is hereby deleted and replaced with: "With respect to bodily injury or death to third parties, each party's liability shall be restricted to an equitable proportion as reflects its relative fault in relation to the other party's contribution to the injury or death of the third party."

XXXIII. Section 17.7, Limitations of Liability and Indemnification

Section 16.14 is hereby deleted in its entirety and replaced with: "Intentionally omitted."

XXXIV. Section 17.8, Limitations of Liability and Indemnification

New Section 17.8 is hereby added as follows:

"Brainlab shall indemnify, defend, and hold harmless Customer, its officers, and employees, from and against any and all claims by a third party alleging bodily injury or property damage and any and all liabilities and losses incurred by County on account of such claims (including reasonable attorneys' fees) to the extent caused by Brainlab's negligence or wilful misconduct in connection with the performance of this Quote and Terms provided: (a) Customer notifies Brainlab within a commercially reasonable time of its receipt of notice of any claim; (b) Brainlab has sole control of the defense and all related settlement negotiations (except that Brainlab shall not settle any claim which imposes a financial obligation on or admits fault by Customer without Customer's prior consent, such consent not to be unreasonably withheld); and (c) Customer provides Brainlab with reasonable assistance, information and authority necessary for Brainlab to perform its obligations under this Section. The foregoing

indemnification shall not apply to the extent any Claim arises from the negligence or wilful misconduct of Customer or its directors, officers, employees, or any other personnel acting under Customer or any third party., "Brainlab's performance" includes Brainlab's acts or omissions and the acts or omissions of Brainlab's officers, employees."

"County of Monterey shall indemnify, defend, and hold harmless Brainlab, its officers, and employees, from and against any and all claims by a third party alleging bodily injury or property damage and any and all liabilities and losses incurred by Brainlab on account of such claims (including reasonable attorneys' fees) to the extent caused by County's negligence or wilful misconduct in connection with the performance of this Quote and Terms provided: (a) Brainlab notifies Customer within a commercially reasonable time of its receipt of notice of any claim; (b) Customer has sole control of the defense and all related settlement negotiations (except that Customer shall not settle any claim which imposes a financial obligation on or admits fault by Brainlab without Brainlab's prior consent, such consent not to be unreasonably withheld); and (c) Brainlab provides Customer with reasonable assistance, information and authority necessary for Customer to perform its obligations under this Section. The foregoing indemnification shall not apply to the extent any Claim arises from the negligence or wilful misconduct of Brainlab or its directors, officers, employees, or any other personnel acting under Brainlab or any third party. "County's performance" includes County's acts or omissions and the acts or omissions of County's officers, employees."

XXXV. Section 19.1, Confidentiality, Registration, Data Protection

- (a) The following is hereby added to the end of Section 19.1: Except where disclosure is required by law, including disclosures pursuant to a request under the California Public Records Act ("CPRA"), each Party agrees that all information supplied by one Party and its affiliates and agents (collectively, the "Disclosing Party") to the other ("Receiving Party") including, without limitation, (a) source code, prices, trade secrets, mask works, databases, designs and techniques, models, displays and manuals; (b) any unpublished information concerning research activities and plans, marketing or sales plans, sales forecasts or results of marketing efforts, pricing or pricing strategies, costs, operational techniques, or strategic plans, and unpublished financial information, including information concerning revenues, profits, and profit margins; (c) any information relating to customers, patients, business partners, or personnel; (d) Patient Information (as defined in the parties' Business Associate Agreement), and (e) Protected Health Information (as defined in 45 C.F.R. § 160.103), will be deemed confidential and proprietary to the Disclosing Party, regardless of whether such information was disclosed intentionally or unintentionally or marked as "confidential" or "proprietary" ("Confidential Information"). The foregoing definition shall also include any Confidential Information provided by either Party's contractors, subcontractors, agents, or vendors. Confidential Information shall not include information that: (i) is or becomes generally known or available to the public at large other than as a result of a breach by the Receiving Party of any obligation to the Disclosing Party; (ii) was known to the Receiving Party free of any obligation of confidence prior to disclosure by the Disclosing Party; (iii) is disclosed to the Receiving Party on a non-confidential basis by a third party who did not owe an obligation of confidence to the Disclosing Party; or (iv) is developed by the Receiving Party independently of and without reference to any part of the Confidential Information.
- (b) Each Party recognizes the importance of the other Party's Confidential Information. In particular, each Party recognizes and agrees that the Confidential Information of the other is critical to their respective businesses and that neither Party would enter into this Agreement without assurance that such information and the value thereof will be protected as provided in this Section or elsewhere in the Quote and Terms, and the parties' Business Associate Agreement. Accordingly, each Party agrees as follows: (a) the Receiving Party will hold any and all Confidential Information it obtains in strictest confidence and will use and permit use of Confidential Information solely for the purposes of the Quote and Terms. Without limiting the foregoing, the Receiving Party shall use at least the same degree of care, but no less than reasonable care, to avoid disclosure or

use of this Confidential Information as the Receiving Party employs with respect to its own Confidential Information of a like importance; (b) the Receiving Party may disclose or provide access to its responsible employees, agents, and consultants who have a need to know and may make copies of Confidential Information only to the extent reasonably necessary to carry out its obligations hereunder and who are under an obligation of confidentiality; and (c) the Receiving Party will take reasonable measures to protect against access to or use or disclosure of Confidential Information other than in accordance with this Quote and Terms and the parties' Business Associate Agreement. The Receiving Party will require its employees, agents, and consultants not to disclose Confidential Information to third-parties, including without limitation customers, subcontractors, or consultants, without the Disclosing Party's prior written consent, will notify the Disclosing Party immediately of any unauthorized disclosure or use, and will cooperate with the Disclosing Party to protect all proprietary rights in and ownership of its Confidential Information.

- (c) Contractor recognizes and acknowledges the sensitive and confidential nature of patient information it may obtain with regard to County and the treatment services that it provides, and agrees that information with respect to County's treatment services will be governed by the parties' Business Associate Agreement.
- (d) The entire Quote and Terms are subject to disclosure under the CPRA.

XXXVI. Section 19.2, Confidentiality, Registration, Data Protection

The first sentence in Section 19.2 is hereby deleted and replaced with the following:

"For the improvement of Products and customer support Brainlab shall be entitled to collect non-patient, non-confidential, non-protected statistical data stored on the Products."

XXXVII. Section 19.4, Confidentiality, Registration, Data Protection

Sections 19.4 is hereby deleted in its entirety and replaced with: "Intentionally omitted."

XXXVIII. Section 21.1, Applicable Law/Arbitration/Partial Invalidity/Assignment

In Section 21.1, the word "Customer" is hereby changed to "The parties".

XXXIX. Sections 21.2, 21.4 and 21.6, Applicable Law/Arbitration/Partial Invalidity/Assignment

Sections 21.2, 21.4 and 21.6 are hereby deleted in their entireties and replaced with the following:

"21.2. These terms and conditions as well as all contractual and other legal relationships between the parties shall be governed by the laws of the State of California. Prior to initiating any formal or informal legal action against a party for breach of this agreement or otherwise, the parties will work together in good faith to resolve any such dispute. Each party shall designate a representative to handle any dispute and shall escalate the dispute to appropriate management if an amicable resolution cannot initially be agreed upon. Each party shall bear its own costs and expenses, including attorney's fees, related to any dispute hereunder.

21.4. Intentionally Omitted.

21.6. Neither party may assign or transfer this Agreement without the prior written consent of the other party, provided however, that either party may freely assign, without consent from the other party, this Agreement to any affiliate subsidiary or to any person or entity who succeeds to substantially all of the assigning party's assets and business by merger or purchase."

XL. Remainder Unchanged

XL. Remainder Unchanged

Except as expressly amended by this Addendum, the terms and conditions of the Quote and Terms shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized representatives.

Customer

signature

name

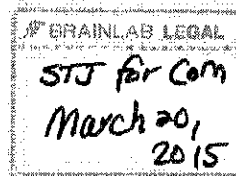
date

Brainlab

signature

name

date



Reviewed as to fiscal provisions

Auditor-Controller
County of Monterey

