



# QUOTATION PURCHASE AGREEMENT

40010783

CNR-14379-Q2F1

menu 74114379

<b>Quotation N°:</b> QUO-17061-W9J4 - 0		<b>Quotation Expiration Date</b> 07/28/2020	<b>Esaote Contact</b> Sales Rep: Amanda Doran Phone (317) 813-6046 E-mail amanda.doran@esaote.com
<b>Billing Account</b> 1500009735 Laurel Family Practice 1441 Constitution Blvd Bldg 400 Ste Salinas 93906-3100 CA	<b>Service Account</b> 1500009735 Laurel Family Practice 1441 Constitution Blvd Bldg 400 Ste Salinas 93906-3100 CA		

## Description:

Esaote North America is pleased to submit this quotation for your review.

The Equipment and Software Service Agreement is between Esaote North America and County of Monterey, on behalf of its Health Department. The agreement will commence as follows: Start: 06/24/2020 Expiration: 06/23/2025 unless terminated in accordance with the terms and conditions.

Please sign at the bottom left hand corner and fax all three pages to Esaote North America at (317) 245-2228. If you have any questions, please contact your sales representative Amanda Doran at (317) 813-6046 or email amanda.doran@esaote.com

This quotation supersedes all previous quotations for the service described herein. The quotation can be relied upon for sixty (60) days after issuance as the basis for Buyer's offer. This document constitutes an Agreement only when it is executed by Buyer and then accepted and executed by Esaote North America, Inc. PAYMENT, OTHER TERMS AND CONDITION ATTACHED INCLUDING DISCLAIMERS OF WARRANTIES AND LIMITATIONS ON SELLER'S LIABILITY ARE PART OF THIS AGREEMENT.

\*\*Applicable Sales Tax will be added to Invoice and is the responsibility of the Buyer.  
TAX EXEMPT? \_\_\_\_ IF YES, ACCEPTABLE EXEMPTION CERTIFICATE MUST BE SUPPLIED

## CUSTOMER ACCEPTANCE

By signing below, Buyer expressly agrees that the terms and conditions that are attached hereof are expressly incorporated herein by reference and made a part hereof for all purposes, and Buyer further agrees to these terms and conditions hereof without objection or modification.

## ESAOTE NORTH AMERICA, INC.

Esaote North America, Inc.  
11907 Exit Five Parkway  
Fishers, IN 46037

DocuSigned by:

C7A30BA39CA8423  
Authorized Signature

8/19/2020 | 3:54 PM PDT

Date

Authorized Signature

Date

Elsa Jimenez

Director of Health

Printed Name and Title of Above Signature

Printed Name of Above Signature

Tax ID: 94-6000524

Social Security Number or FEIN

Title of Person

**Description of Services:****EsaoteCare SILVER**

- Esaote Certified Parts for system, peripheral and transducers includes freight charges
- Technical phone support from 8am - 5pm EST, (800) 428-7378
- Remote diagnostics & servicing when available
- Provides delivery of loaner system
- Software Updates (hardware not included)
- \*Loaner available for MyLab One, Alpha, Five, 25Gold, and 30 Gold, Gamma, Delta

**Contract Excludes:**

- On-site labor & travel for system repairs
- Accidental damage and theft
- Biopsy guides and accessories
- Replacement batteries
- Preventative Maintenance visits not included

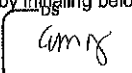
**Description of Equipment Covered:**

Product	Serial Number	PM Visits Per Year	Unit Price	Discount	Total Price
MyLabGamma US SYSTEM	619		\$3,750.00		\$18,750.00
AC2541 - CA 8-1 Probe	2509		Included		Included
SE3123 Endocavity probe 8-4 Radius 10mm	15086104		Included		Included
HEIGHT-ADJUSTABLE TROLLEY MyLabAlpha/Gam	1509		Included		Included
<b>Grand total (excluding taxes)</b>					<b>\$18,750.00 (USD) plus taxes</b>

**Select Payment Option**

Select payment option by initialing below Total:

Annual Option



← initial

Annual Agreement: \$3,750.00 plus taxes

Quarterly Option

← initial

Quarterly Basis: \$984.38 per quarter plus taxes (includes 5.00% finance fee)

Invoices will be sent approximately 30 days prior to the end of the warranty period or start of contract.

## SERVICE TERMS &amp; CONDITIONS

1. **Payment Terms:** (a) At the commencement of each twelve (12) month period covered by this Agreement ("Agreement Year"), Customer agrees to pay for that Agreement Year the full amount for the selected coverage ("Coverage Price") as initially set forth on the cover page or Coverage Price as adjusted in accordance with paragraph b below.; (b) ~~Esaote North America, Inc. ("Esaote") shall invoice Customer according to the terms specified on the front of this Agreement, and invoices shall be due within thirty (30) days of invoice date. Invoices not paid when due shall be subject to a late charge equal to 1 1/2% of the amount of invoice per month, or the highest lawful rate which may be charged to Customer, whichever is less;~~ (c) ~~Customer shall also pay reasonable fees and expenses (including attorney's fees and expenses) incurred by Esaote in the collection of any amounts due from Customer to Esaote;~~ (d) Customer shall be responsible for all federal, state and local taxes applicable to this Agreement.; (e) All prices for parts are F.O.B. Esaote's facility currently located at the address listed at the beginning of this Agreement.

2. **Repair Service:** (a) To the extent covered by this Agreement, following a request for repair service by Customer, if deemed necessary by Esaote, an Esaote Field Service Engineer will travel to the site of the equipment covered by this Agreement (hereafter "Equipment") and perform such repairs, adjustments and replacement of the Equipment or parts of the Equipment as are necessary to cause the Equipment to function in accordance with the manufacturer's specifications for the Equipment, or Equipment may be shipped to Esaote for repair if covered under the factory mail in program. Service covered under this Agreement shall be performed between the hours of 8:00am to 5:00pm, Monday through Friday, but not on National holidays. Arrangements can be made for weekend or evening service; however such services shall be charged at Esaote's after hour billable rates. If at any time after arrival at Customer's facilities, Esaote service representatives are unable to proceed with repair service due to delays caused by Customer, Esaote shall charge Customer for labor and travel expenses resulting from such delays at Esaote's current rates. (b) Customer acknowledges that Esaote's obligations for repair service are on an as-needed basis and that there may be periods of time during the term of this Agreement when no service is actually needed by Customer. (c) Esaote is not responsible for any loss of stored data that may occur when your product is being repaired. Customer is responsible for backing up all data stored on a system and removing it from the system prior to any repairs by Esaote.

3. **Preventive Maintenance:** To the extent covered by this Agreement, (a) Esaote Field Service Engineer will schedule a visit with the Customer to perform the preventive maintenance service specified in this agreement, at which time he/she will inspect, analyze, adjust, repair and/or, unless this Agreement is for labor only, replace parts as necessary to cause the Equipment to function in accordance with the manufacturer's specifications for the Equipment.

4. **Access to Equipment:** Customer agrees to provide Esaote Field Service Engineers free and safe access to the Equipment, as well as a safe and workable space in which to perform any necessary repairs.

5. **Replacement Parts:** (a) Esaote will repair or, at its option, replace using new or reconditioned parts and/or assemblies, all Equipment parts, and assemblies which are covered in this Agreement. Esaote reserves the right to perform such repair at Customer's site or at a Esaote facility. (b) If Esaote decides to ship to Customer replacement Equipment parts, Customer shall return any replaced Equipment part to Esaote within seven (7) days of receiving any replacement part. Such replacement parts shall belong to Esaote. Customer must follow the procedures contained in paragraph 5 (d) if returning any equipment parts. (c) Should Customer fail to return the replaced Equipment part within the time specified in paragraph 5 (b), Esaote may either invoice Customer for such equipment at full list price or charge customer a reasonable daily rental, at Esaote's option. Such invoice shall be due upon receipt by Customer. Invoice charges not paid when due shall be subject to the same late charges and collection fees set forth in paragraph 1. (d) All Equipment or Equipment parts returned to Esaote for any reason must be accompanied by a Return Material Authorization ("RMA") number. Esaote will have no obligation to accept the Equipment or Equipment part from the freight carrier without an RMA.

6. **Limitations on Esaote's Service Obligations:** (a) Esaote shall not be required to service hereunder any Equipment: (i) where the Equipment has been serviced or modified by persons other than authorized Esaote personnel without Esaote's prior written approval; (ii) where the Equipment has been accidentally damaged, misused, abused, neglected, tampered with or subjected to unusual or abnormal electrical or mechanical stress; (iii) where the Equipment has been interconnected with other Equipment or accessories not expressly provided for in the operator's manual; (iv) where the Equipment has not been maintained by Customer according to Esaote specifications; or (v) where the Equipment has been damaged by fire, flood, water, storm, wind, lightning, or damage from natural causes. (b) Esaote shall not service hereunder any products not listed as Equipment on the quote or contract.

This includes ECG cable and lead wires and supplies, consumables, lamps, fuses, and finish. Further, Esaote shall not make service calls (repair service) except to the extent as agreed to herein. (c) Esaote's obligations under this Agreement do not constitute a warranty of any kind and Esaote specifically disclaims all warranties on its service and replacement parts, both expressed or implied, including, but not limited to, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose, and any warranty of title against infringement. (d) Upon termination of this Agreement, Esaote shall have no further obligation or liability with respect to the Equipment or its operation and use.

7. **Termination:** Customer may terminate this Agreement without cause, with sixty (60) days prior written notice to Esaote. Customer is entitled to a refund of the portion of Coverage Price, if any, for the unexpired term of the Agreement Year, from the effective date of the termination until the end of the Agreement Year, calculated on a pro rata basis less a 20% cancellation fee. Esaote has the right to terminate this agreement without cause, with written notice to Customer. If Customer fails to make its payments timely or otherwise defaults in its obligations under this Agreement, Esaote has the right to terminate this Agreement immediately and without prior notice. In such event, Customer shall not be entitled to any refund, but is responsible for any outstanding balance.

8. **Indemnity:** ~~Esaote shall not be liable for, and Customer hereby indemnifies and holds Esaote, its officers, directors, employees and agents harmless from, any and all claims, costs, penalties, fees, losses or damages, direct or consequential, to Customer, its officers, directors, employees, agents and third parties which may arise out of or in connection with: (a) this Agreement; (b) any services performed or parts supplied hereunder; (c) any breach of this Agreement or (d) any delay in maintenance services under this Agreement; provided, however, that such indemnification shall not apply to any property damage at Customer's site caused solely by the negligence of Esaote or its employees.~~

9. **Exclusions:** (a) If Esaote determines that repair service is required as a result of Customer abuse of Equipment (as determined by an authorized Esaote Field Service Engineer), and Customer requests service for such Equipment, Customer acknowledges that Esaote will charge Customer for such service as its standard billing rates then in effect and Customer agrees to pay such rates as requested. (b) This Agreement shall be assignable by Esaote. This agreement shall be assignable by Customer, provided; (i) Esaote agrees to such transfer in writing; (ii) Customer is not in default under this Agreement; and (iii) Customer pays to Esaote a five hundred dollar (\$500.00) transfer fee. (a)-This Agreement shall be construed and enforced in accordance with the laws of the state of Indiana.

10. **Complete Statement:** This Agreement contains the entire, complete and exclusive Agreement between the parties with respect to servicing the Equipment. Esaote's acceptance hereof is not an acceptance or written confirmation of any offer to order submitted by the Customer other than that made in this Agreement, and any terms and conditions of any such offer or order submitted by Customer in addition to or contrary to the terms and conditions of this Agreement are rejected and shall be given no force or effect. Neither party is relying on any such statement or order. This Agreement may not be modified except by a subsequent writing signed and agreed to by Esaote and Customer.

11. **Software Maintenance Coverage:** Software maintenance includes updates to software version purchased. Software upgrades, when and if available, provide improvements, enhancements, and corrections that enable the software to perform in accordance with the product specifications as defined at the time of equipment purchase. Software upgrades are offered at the sole discretion of Esaote North America. Software upgrades do not include any new software features or new hardware, if additional hardware is required to run the upgrade. If the Equipment and Software Service Agreement is not opted for prior to the expiration of the initial twelve (12) month warranty period, the purchaser will be required to purchase the individual software version(s) for each software upgrade necessary to obtain the latest released software version before purchasing the Equipment and Software Service Agreement including upgrades. Unless safety related, software upgrades will be performed during service repair visit. Technical telephone support will be provided during regular business hours excluding holidays. Remote diagnostics are included for systems that have remote connectivity over the internet.

## **ADDENDUM 1**

to Equipment and Software Service Agreement ("Agreement")  
by and between Esaote North America ("Esaote"), and County of Monterey, on behalf of its  
Health Department ("County" or "Customer")

This Addendum, dated as of the effective date of the Agreement, amends, modifies, and supplements the Agreement by and between Esaote and County. This Addendum has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, Esaote and County agree that the Agreement service terms and conditions shall be amended, modified, and supplemented as follows:

### **Under Section 1. PAYMENT TERMS:**

Paragraphs (b) and (c) are deleted in their entirety and replaced with the following:

Esaote North America, Inc. ("Esaote") shall invoice the County according to the terms specified in this Agreement, and the County shall pay the invoice within 30 days from the time the County Auditor-Controller receives the invoice.

### **Under Section 7. TERMINATION:**

The following paragraphs is revised to add the **underlined, bolded text** as follows:

Customer may terminate this Agreement without cause, with sixty (60) days prior written notice to Esaote. Customer is entitled to a refund of the portion of Coverage Price, if any, for the unexpired term of the Agreement Year, from the effective date of the termination until the end of the Agreement Year, calculated on a pro rata basis less a 20% cancellation fee. Esaote has the right to terminate this agreement without cause, with **sixty (60) days prior** written notice to Customer. If Customer fails to make its payments timely or otherwise defaults in its obligations under this Agreement, Esaote has the right to terminate this Agreement immediately and without prior notice. In such event, Customer shall not be entitled to any refund, but is responsible for any outstanding balance.

### **Under Section 8. INDEMNITY:**

Section 8. is deleted in its entirety and replaced with the following mutual indemnification:

#### **8. Indemnity.**

- a. Esaote shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents, employees, or subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by Esaote and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of County and/or its

officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. Esaote shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Esaote is obligated to indemnify, defend and hold harmless the County under this Agreement.

- b. The County shall indemnify, defend, and hold harmless Esaote, its officers, agents, employees, and subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the County and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Esaote and/or its officers, agents, employees and subcontractors. The County shall reimburse Esaote for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless Esaote under this Agreement.
- c. Esaote will defend, at its expense, any action brought against Customer, to the extent that such action is based on a claim of infringement of any U.S. patent, trade secret, or copyright resulting from the use by Customer as permitted hereunder of the services "(Services)" provided by Esaote and as made accessible to Customer by Esaote ("Infringement"), and Esaote shall pay all damages and costs awarded against Customer which are attributable to such Infringement, provided that Esaote is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged Infringement and is given authority, information and assistance necessary to defend or settle such claim; provided, however, that Esaote shall have no liability hereunder to the extent any such claim arises out of Customer's (i) access to or use of the Services other than in accordance with the terms of this Agreement, or (ii) access to or use of the Services with software or equipment not provided to Customer by Esaote or specified by Esaote as required to use the Services.
- d. In the event an infringement claim is made, Esaote shall have the right, in its sole discretion, to either (i) procure a right for Customer to continue accessing and using the allegedly infringing Services in accordance with the terms of this Agreement, (ii) replace or modify all or any portion of the Services to avoid or mitigate any infringement, without loss of material functionality or performance, or (iii) terminate the applicable Services provided hereunder, and refund to Customer a pro rata portion of the prepaid annual fee paid for the month in which this Agreement is so terminated. Esaote shall furnish one of the foregoing remedies within forty-five (45) days of notice of the claim. The foregoing and the indemnification above shall constitute Esaote's sole and exclusive obligation and Customer's sole and exclusive remedy for any infringement by the Services or Customer's use thereof of any third party Intellectual Property Rights.
- e. To receive these indemnities, the party seeking indemnification must promptly notify the other party in writing of such a claim and provide reasonable cooperation (at the indemnifying party's expense) and tender full authority (consistent with its duties under this section and subject to Customer's rights below) to defend or settle such claim. Neither party has any obligation to indemnify the indemnified party in connection with any settlement made by the indemnified party without the indemnifying party's written consent. The indemnified party has the right to participate at its own expense and with its own legal representation. Under no circumstances will any stipulated judgement or

settlement purport to bind Customer or impose any financial obligation on Customer without Customer's prior written authorization.

**Under Section 9. EXCLUSIONS:**

Paragraph (c) is revised as follows:

(c.) This Agreement shall be construed and enforced in accordance with the laws of the State of **California**.

**The following Insurance Section is hereby added to this Agreement:**

**12. INSURANCE REQUIREMENTS.**

- A. **Evidence of Coverage.** Prior to commencement of this Agreement, Esaote shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Esaote upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Office, unless otherwise directed. Esaote shall not receive approval for services for work under this Agreement until all insurance has been obtained as required and approved by the County. This approval of insurance shall neither relieve nor decrease the liability of Esaote.

- B. **Qualifying Insurers.** All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.
- C. **Insurance Coverage Requirements.** Without limiting Esaote duty to indemnify, Esaote 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, Broadform Property Damage, Independent Contractors, 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 \$500,000 per occurrence.

**Workers Compensation Insurance,** if Esaote 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.

Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date Esaote completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) calendar days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Esaote and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insured with respect to liability arising out of Esaote's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by Esaote's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, Esaote shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that Esaote has in effect the insurance required by this Agreement. Esaote shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

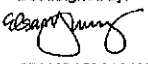
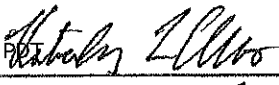
Esaote shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Office. If the certificate is not received by the expiration date, Esaote shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by Esaote to maintain such insurance coverage is a breach of this Agreement, which entitles County, at its sole and absolute discretion, to terminate this Agreement immediately.

COUNTY OF MONTEREY (Customer)


ESAOTE NORTH AMERICA, INC.

Authorized Signature:

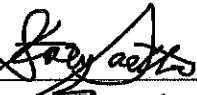
Authorized Signature:

DocuSigned by:  
By:  Date: 8/19/2020 | 3:54 PM PDT  
C7A305A59CA8423... (Title of Signer) Director of Health  
By:  Date: 8/19/2020  
(Title of Signer) CF

Approved as to Fiscal Provisions:

DocuSigned by:  
By:  Date: 8/19/2020 | 5:42 PM PDT  
03834BFECD8449... Auditor-Controller

Approved as to Legal Form:

By:  Date: Aug 19, 2020  
County Counsel





# QUOTATION PURCHASE AGREEMENT

400/0789

CNR-14380-17m2

MENU 741 14380

<b>Quotation N°:</b> QUO-17062-F3S9 - 0	<b>Quotation Expiration Date</b> 7/28/2020	<b>Esaote Contact</b> Sales Rep: Amanda Doran Phone (317) 813-6046 E-mail amanda.doran@esaote.com
<b>Billing Account</b> 1500009735 Laurel Family Practice 1441 Constitution Blvd Bldg 400 Ste Salinas 93906-3100 CA	<b>Service Account</b> 1500009735 Laurel Family Practice 1441 Constitution Blvd Bldg 400 Ste Salinas 93906-3100 CA	

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TAX EXEMPT? \_\_\_\_\_ IF YES, ACCEPTABLE EXEMPTION CERTIFICATE MUST BE SUPPLIED

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DocuSigned by:

C7A30BA59CA8423...

Authorized Signature

8/19/2020 | 3:54 PM PDT

Date

## ESAOTE NORTH AMERICA, INC.

Esaote North America, Inc.  
11907 Exit Five Parkway  
Fishers, IN 46037

Authorized Signature

Date

Elsa Jimenez

Printed Name and Title of Above Signature

Director of Health

Printed Name of Above Signature

Tax ID: 94-6000524

Social Security Number or FEIN

Title of Person

**Description of Services:****EsateCare SILVER**

- Esaote Certified Parts for system, peripheral and transducers includes freight charges
- Technical phone support from 8am - 5pm EST, (800) 428-7378
- Remote diagnostics & servicing when available
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**Description of Equipment Covered:**

Product	Serial Number	PM Visits Per Year	Unit Price	Discount	Total Price
HEIGHT-ADJUSTABLE TROLLEY MyLabAlpha/Gam	1527		Included		Included
MyLabGamma US SYSTEM	620		\$3,750.00		\$18,750.00
SE3123 Endocavity probe 8-4 Radius 10mm	15086105		Included		Included
AC2541 - CA 8-1 Probe	2507		Included		Included
<b>Grand total (excluding taxes)</b>				<b>\$18,750.00 (USD) plus taxes</b>	

**Select Payment Option**

Select payment option by initialing below Total:

Annual Option

Amx

← Initial

Annual Agreement: \$3,750.00 plus taxes

Quarterly Option

\_\_\_\_\_

← Initial

Quarterly Basis: \$984.38 per quarter plus taxes (includes 5.00% finance fee)

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## SERVICE TERMS &amp; CONDITIONS

**1. Payment Terms:** (a) At the commencement of each twelve (12) month period covered by this Agreement ("Agreement Year"), Customer agrees to pay for that Agreement Year the full amount for the selected coverage ("Coverage Price") as initially set forth on the cover page or Coverage Price as adjusted in accordance with paragraph b below.; (b) ~~Esaote North America, Inc. ("Esaote") shall invoice Customer according to the terms specified on the front of this Agreement, and invoices shall be due within thirty (30) days of invoice date. Invoices not paid when due shall be subject to a late charge equal to 1-1/2% of the amount of invoice per month, or the highest lawful rate which may be charged to Customer, whichever is less.; (c) Customer shall also pay reasonable fees and expenses (including attorney's fees and expenses) incurred by Esaote in the collection of any amounts due from Customer to Esaote; (d) Customer shall be responsible for all federal, state and local taxes applicable to this Agreement; (e) All prices for parts are F.O.B. Esaote's facility currently located at the address listed at the beginning of this Agreement.~~

**2. Repair Service:** (a) To the extent covered by this Agreement, following a request for repair service by Customer, if deemed necessary by Esaote, an Esaote Field Service Engineer will travel to the site of the equipment covered by this Agreement (hereafter "Equipment") and perform such repairs, adjustments and replacement of the Equipment or parts of the Equipment as are necessary to cause the Equipment to function in accordance with the manufacturer's specifications for the Equipment, or Equipment may be shipped to Esaote for repair if covered under the factory mail in program. Service covered under this Agreement shall be performed between the hours of 8:00am to 5:00pm, Monday through Friday, but not on National holidays. Arrangements can be made for weekend or evening service; however such services shall be charged at Esaote's after hour billable rates. If at any time after arrival at Customer's facilities, Esaote service representatives are unable to proceed with repair service due to delays caused by Customer, Esaote shall charge Customer for labor and travel expenses resulting from such delays at Esaote's current rates. (b) Customer acknowledges that Esaote's obligations for repair service are on an as-needed basis and that there may be periods of time during the term of this Agreement when no service is actually needed by Customer. (c) Esaote is not responsible for any loss of stored data that may occur when your product is being repaired. Customer is responsible for backing up all data stored on a system and removing it from the system prior to any repairs by Esaote.

**3. Preventive Maintenance:** To the extent covered by this Agreement, (a) Esaote Field Service Engineer will schedule a visit with the Customer to perform the preventive maintenance service specified in this agreement, at which time he/she will inspect, analyze, adjust, repair and/or, unless this Agreement is for labor only, replace parts as necessary to cause the Equipment to function in accordance with the manufacturer's specifications for the Equipment.

**4. Access to Equipment:** Customer agrees to provide Esaote Field Service Engineers free and safe access to the Equipment, as well as a safe and workable space in which to perform any necessary repairs.

**5. Replacement Parts:** (a) Esaote will repair or, at its option, replace using new or reconditioned parts and/or assemblies, all Equipment parts, and assemblies which are covered in this Agreement. Esaote reserves the right to perform such repair at Customer's site or at a Esaote facility. (b) If Esaote decides to ship to Customer replacement Equipment parts, Customer shall return any replaced Equipment part to Esaote within seven (7) days of receiving any replacement part. Such replacement parts shall belong to Esaote. Customer must follow the procedures contained in paragraph 5 (d) if returning any equipment parts. (c) Should Customer fail to return the replaced Equipment part within the time specified in paragraph 5 (b), Esaote may either invoice Customer for such equipment at full list price or charge customer a reasonable daily rental, at Esaote's option. Such invoice shall be due upon receipt by Customer. Invoice charges not paid when due shall be subject to the same late charges and collection fees set forth in paragraph 1. (d) All Equipment or Equipment parts returned to Esaote for any reason must be accompanied by a Return Material Authorization ("RMA") number. Esaote will have no obligation to accept the Equipment or Equipment part from the freight carrier without an RMA.

**6. Limitations on Esaote's Service Obligations:** (a) Esaote shall not be required to service hereunder any Equipment: (i) where the Equipment has been serviced or modified by persons other than authorized Esaote personnel without Esaote's prior written approval; (ii) where the Equipment has been accidentally damaged, misused, abused, neglected, tampered with or subjected to unusual or abnormal electrical or mechanical stress; (iii) where the Equipment has been interconnected with other Equipment or accessories not expressly provided for in the operator's manual; (iv) where the Equipment has not been maintained by Customer according to Esaote specifications; or (v) where the Equipment has been damaged by fire, flood, water, storm, wind, lightning, or damage from natural causes. (b) Esaote shall not service hereunder any products not listed as Equipment on the quote or contract.

This includes ECG cable and lead wires and supplies, consumables, lamps, fuses, and finish. Further, Esaote shall not make service calls (repair service) except to the extent as agreed to herein. (c) Esaote's obligations under this Agreement do not constitute a warranty of any kind and Esaote specifically disclaims all warranties on its service and replacement parts, both expressed or implied, including, but not limited to, any implied warranty of merchantability, any implied warranty of fitness for a particular purpose, and any warranty of title against infringement. (d) Upon termination of this Agreement, Esaote shall have no further obligation or liability with respect to the Equipment or its operation and use.

**7. Termination:** Customer may terminate this Agreement without cause, with sixty (60) days prior written notice to Esaote. Customer is entitled to a refund of the portion of Coverage Price, if any, for the unexpired term of the Agreement Year, from the effective date of the termination until the end of the Agreement Year, calculated on a pro rata basis less a 20% cancellation fee. ~~Esaote has the right to terminate this agreement without cause, with written notice to Customer. If Customer fails to make its payments timely or otherwise defaults in its obligations under this Agreement, Esaote has the right to terminate this Agreement immediately and without prior notice. In such event, Customer shall not be entitled to any refund, but is responsible for any outstanding balance.~~

**8. Indemnity:** ~~Esaote shall not be liable for, and Customer hereby indemnifies and holds Esaote, its officers, directors, employees and agents harmless from, any and all claims, costs, penalties, fees, losses or damages, direct or consequential, to Customer, its officers, directors, employees, agents and third parties which may arise out of or in connection with: (a) this Agreement; (b) any services performed or parts supplied hereunder; (c) any breach of this Agreement or (d) any delay in maintenance services under this Agreement; provided, however, that such indemnification shall not apply to any property damage at Customer's site caused solely by the negligence of Esaote or its employees.~~

**9. Exclusions:** (a) If Esaote determines that repair service is required as a result of Customer abuse of Equipment (as determined by an authorized Esaote Field Service Engineer), and Customer requests service for such Equipment, Customer acknowledges that Esaote will charge Customer for such service as its standard billing rates then in effect and Customer agrees to pay such rates as requested. (b) This Agreement shall be assignable by Esaote. This agreement shall be assignable by Customer, provided; (i) Esaote agrees to such transfer in writing; (ii) Customer is not in default under this Agreement; and (iii) Customer pays to Esaote a five hundred dollar (\$500.00) transfer fee. ~~(c) This Agreement shall be construed and enforced in accordance with the laws of the state of Indiana.~~

**10. Complete Statement:** This Agreement contains the entire, complete and exclusive Agreement between the parties with respect to servicing the Equipment. Esaote's acceptance hereof is not an acceptance or written confirmation of any offer to order submitted by the Customer other than that made in this Agreement, and any terms and conditions of any such offer or order submitted by Customer in addition to or contrary to the terms and conditions of this Agreement are rejected and shall be given no force or effect. Neither party is relying on any such statement or order. This Agreement may not be modified except by a subsequent writing signed and agreed to by Esaote and Customer.

**11. Software Maintenance Coverage:** Software maintenance includes updates to software version purchased. Software upgrades, when and if available, provide improvements, enhancements, and corrections that enable the software to perform in accordance with the product specifications as defined at the time of equipment purchase. Software upgrades are offered at the sole discretion of Esaote North America. Software upgrades do not include any new software features or new hardware, if additional hardware is required to run the upgrade. If the Equipment and Software Service Agreement is not opted for prior to the expiration of the initial twelve (12) month warranty period, the purchaser will be required to purchase the individual software version(s) for each software upgrade necessary to obtain the latest released software version before purchasing the Equipment and Software Service Agreement including upgrades. Unless safety related, software upgrades will be performed during service repair visit. Technical telephone support will be provided during regular business hours excluding holidays. Remote diagnostics are included for systems that have remote connectivity over the internet.

## **ADDENDUM 1**

to Equipment and Software Service Agreement ("Agreement")  
by and between Esaote North America ("Esaote"), and County of Monterey, on behalf of its  
Health Department ("County" or "Customer")

This Addendum, dated as of the effective date of the Agreement, amends, modifies, and supplements the Agreement by and between Esaote and County. This Addendum has the full force and effect as if set forth within the Agreement. To the extent that any of the terms or conditions contained in this Addendum may contradict or conflict with any of the terms and conditions of the Agreement, it is expressly understood and agreed that the terms and conditions of this Addendum shall take precedence and supersede the attached Agreement.

NOW, THEREFORE, Esaote and County agree that the Agreement service terms and conditions shall be amended, modified, and supplemented as follows:

### **Under Section 1. PAYMENT TERMS:**

Paragraphs (b) and (c) are deleted in their entirety and replaced with the following:

Esaote North America, Inc. ("Esaote") shall invoice the County according to the terms specified in this Agreement, and the County shall pay the invoice within 30 days from the time the County Auditor-Controller receives the invoice.

### **Under Section 7. TERMINATION:**

The following paragraphs is revised to add the **underlined, bolded text** as follows:

Customer may terminate this Agreement without cause, with sixty (60) days prior written notice to Esaote. Customer is entitled to a refund of the portion of Coverage Price, if any, for the unexpired term of the Agreement Year, from the effective date of the termination until the end of the Agreement Year, calculated on a pro rata basis less a 20% cancellation fee. Esaote has the right to terminate this agreement without cause, with **sixty (60) days prior** written notice to Customer. If Customer fails to make its payments timely or otherwise defaults in its obligations under this Agreement, Esaote has the right to terminate this Agreement immediately and without prior notice. In such event, Customer shall not be entitled to any refund, but is responsible for any outstanding balance.

### **Under Section 8. INDEMNITY:**

Section 8. is deleted in its entirety and replaced with the following mutual indemnification:

#### **8. Indemnity.**

- a. Esaote shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents, employees, or subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by Esaote and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of County and/or its

- officers, agents, employees and subcontractors. It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. Esaote shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which Esaote is obligated to indemnify, defend and hold harmless the County under this Agreement.
- b. The County shall indemnify, defend, and hold harmless Esaote, its officers, agents, employees, and subcontractors from any claim, liability, loss, injury or damage arising out of, or in connection with, the performance of this Agreement by the County and/or its officers, agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence or willful misconduct of Esaote and/or its officers, agents, employees and subcontractors. The County shall reimburse Esaote for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the County is obligated to indemnify, defend and hold harmless Esaote under this Agreement.
  - c. Esaote will defend, at its expense, any action brought against Customer, to the extent that such action is based on a claim of infringement of any U.S. patent, trade secret, or copyright resulting from the use by Customer as permitted hereunder of the services "(Services)" provided by Esaote and as made accessible to Customer by Esaote ("Infringement"), and Esaote shall pay all damages and costs awarded against Customer which are attributable to such Infringement, provided that Esaote is promptly informed in writing and furnished a copy of each communication, notice or other action relating to the alleged Infringement and is given authority, information and assistance necessary to defend or settle such claim; provided, however, that Esaote shall have no liability hereunder to the extent any such claim arises out of Customer's (i) access to or use of the Services other than in accordance with the terms of this Agreement, or (ii) access to or use of the Services with software or equipment not provided to Customer by Esaote or specified by Esaote as required to use the Services.
  - d. In the event an infringement claim is made, Esaote shall have the right, in its sole discretion, to either (i) procure a right for Customer to continue accessing and using the allegedly infringing Services in accordance with the terms of this Agreement, (ii) replace or modify all or any portion of the Services to avoid or mitigate any infringement, without loss of material functionality or performance, or (iii) terminate the applicable Services provided hereunder, and refund to Customer a pro rata portion of the prepaid annual fee paid for the month in which this Agreement is so terminated. Esaote shall furnish one of the foregoing remedies within forty-five (45) days of notice of the claim. The foregoing and the indemnification above shall constitute Esaote's sole and exclusive obligation and Customer's sole and exclusive remedy for any infringement by the Services or Customer's use thereof of any third party Intellectual Property Rights.
  - e. To receive these indemnities, the party seeking indemnification must promptly notify the other party in writing of such a claim and provide reasonable cooperation (at the indemnifying party's expense) and tender full authority (consistent with its duties under this section and subject to Customer's rights below) to defend or settle such claim. Neither party has any obligation to indemnify the indemnified party in connection with any settlement made by the indemnified party without the indemnifying party's written consent. The indemnified party has the right to participate at its own expense and with its own legal representation. Under no circumstances will any stipulated judgement or

settlement purport to bind Customer or impose any financial obligation on Customer without Customer's prior written authorization.

**Under Section 9. EXCLUSIONS:**

Paragraph (c) is revised as follows:

(c.) This Agreement shall be construed and enforced in accordance with the laws of the State of California.

**The following Insurance Section is hereby added to this Agreement:**

**12. INSURANCE REQUIREMENTS.**

- A. **Evidence of Coverage.** Prior to commencement of this Agreement, Esaote shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, Esaote upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Office, unless otherwise directed. Esaote shall not receive approval for services for work under this Agreement until all insurance has been obtained as required and approved by the County. This approval of insurance shall neither relieve nor decrease the liability of Esaote.

- B. **Qualifying Insurers.** All coverage, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Contracts/Purchasing Officer.
- C. **Insurance Coverage Requirements.** Without limiting Esaote duty to indemnify, Esaote 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, Broadform Property Damage, Independent Contractors, 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 \$500,000 per occurrence.

**Workers Compensation Insurance,** if Esaote 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.

Other Insurance Requirements. All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of three (3) years following the date Esaote completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty (30) calendar days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Esaote and additional insured with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability policies shall provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insured with respect to liability arising out of Esaote's work, including ongoing and completed operations, and shall further provide that such insurance is primary insurance to any insurance or self-insurance maintained by the County and that the insurance of the Additional Insured shall not be called upon to contribute to a loss covered by Esaote's insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, Esaote shall file certificates of insurance with the County's contract administrator and the County's Contracts/Purchasing Office, showing that Esaote has in effect the insurance required by this Agreement. Esaote shall file a new or amended certificate of insurance within five (5) calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

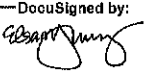

Esaote shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Office. If the certificate is not received by the expiration date, Esaote shall have five (5) calendar days to send the certificate, evidencing no lapse in coverage during the interim. Failure by Esaote to maintain such insurance coverage is a breach of this Agreement, which entitles County, at its sole and absolute discretion, to terminate this Agreement immediately.

**COUNTY OF MONTEREY (Customer)**

**ESAOTE NORTH AMERICA, INC.**

Authorized Signature:


Authorized Signature:

DocuSigned by:  
By:  Date: 8/19/2020 | 3:54 PM PDT  
07A80DA690A0420... (Title of Signer) Director of Health  
By:  Date: 8/19/2020  
038345FEC1D8449... (Title of Signer) CA

Approved as to Fiscal Provisions:

DocuSigned by:  
By:  Date: 8/19/2020 | 5:42 PM PDT  
038345FEC1D8449... Auditor-Controller

Approved as to Legal Form:

By:  Date: Aug 19, 2020  
County Counsel