



Bid Waiver Form

Revised 02/2020

Short Description of Goods/Services	CT Scanner & Service Plan
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Date	July 28, 2020
Department	Medical Examiner
Name	Barry Irmén
Email	irmen@countyofdane.com
Phone	608-284-6000
Purchasing Officer	Pete Patten

Vendor Name	NeuroLogica
Vendor MUNIS #	TBD
Requisition #	TBD
Requisition Year	2020
Total Cost	\$ 942,250

A VENDOR QUOTE MUST BE ATTACHED TO THE WAIVER FOR APPROVAL

Provide a detailed description of the goods/services intended to be purchased:

BodyTom Elite Core System CT Scanner Equipment which includes NeCT, Scout Scanning, CT Angiography with Bolus Tracking, CT Perfusion, Imaging Station and Cart with Shielding Package, Integrated MP3 Sound Dock, 2D Software, Noise Reduction, Metal Artifact Reduction, Multi Planar Reconstruction, 3D Volumetric Reconstruction, New System Training, and a 15 Month Warranty. This also includes a 3 year Service Plan.



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Procurement Exception List (place an "X" next to any that apply)	
	Emergency Procurement
X	Only one vendor possesses the unique and singularly available ability to meet the Department's requirements
	Unique and specific technical qualifications are required
	A special adaptation for a special purpose is required
	A unique or opportune buying condition exists

Provide a detailed explanation as to why the competitive bidding (RFB/RFP) process cannot be used. Also provide a detailed justification in relation to the Procurement Exception chosen:

As referenced in the attached Sole Source Justification letter, the BodyTom Elite is the only mobile full-body CT scanner with a 200cm (78 inches or 6 ft. 6 in.) scan range used. There is not another portable CT scanner available on the market that incorporates the full body scan range. NeuroLogica has agreed to extend the warranty out to 15 months.

Bid Waiver Approval (Purchasing Use Only)

Under \$37,000 Controller Approval	Date
\$37,000 or over Personnel & Finance Committee Approval Date	

To whom it may concern,

This letter is to confirm that the BodyTom Elite is a sole source product, manufactured, sold, and distributed in the United States exclusively by Samsung NeuroLogica. It is the only Mobile Full-Body Computed Tomography (CT) scanner with a 200cm scan range used.

NeuroLogica released the BodyTom Elite in 2017 with a 60cm field of view, combining rapid scan time, flexible settings, and immediate image viewing makes the BodyTom CT scanner a valuable tool to any facility needing versatile real-time mobile imaging

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Dunn". The signature is stylized and cursive, with a large initial "S" and "D".

Stephen Dunn

Product Manager mCT

Quote # 9032b
Quote Date: 7/27/2020
Valid Until: 10/25/2020



*Picture may include optional accessories

Regional Account Executive	Email	Phone	F.O.B. Point	Payment Terms
Peter Malott	pmalott@neurologica.com	310.595.6471	Danvers, MA	Net 30 Days

Customer Information	GPO	GPO Contract #
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Dane County Medical Examiner
3111 Luds Lane
McFarland, WI 53558

<https://medex.countyofdane.com/>

	Name	Phone	Email
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Project Manager: Barry Irmén (608) 576-9166 irmen@countyofdane.com

Other

Comments: **NeuroLogica guarantees a December 2020 installation based on receiving the PO by Wednesday, Sept 16, 2020**
Offer includes warranty extension from 12 months to 15 months
Customer commits to signing a 3-year service contract at time of system purchase

Dane County Medical Examiner
3111 Luds Lane
McFarland, WI 53558

QUANTITY	DESCRIPTION	ITEM	UNIT PRICE	AMOUNT
1	BodyTom® Elite Core System	0-NL4000-002	858,000.00	\$ 858,000.00
	BodyTom® Elite Multislice Scanner		Included	
	NeCT		Included	
	Scout Scanning		Included	
	CT Angiography with Bolus Tracking		Included	
	CT Perfusion	0-00003-001	Included	
	Imaging Station with Cart with Shielding Package	0-00132-001	Included	
	Integrated MP3 Sound Dock		Included	
	2D Software		Included	
	Noise Reduction		Included	
	Metal Artifact Reduction		Included	
	Multi Planar Reconstruction (MPR)		Included	
	3D Volumetric Reconstruction		Included	
	15-Month Warranty		Included	
	New System Training	0-00095-005	Included	
	6 Days New System Onsite Training		Included	
	Upto 6 Technologists		Included	
	Follow up days expire within 12 months of initial onsite training		Included	
			Subtotal	\$ 858,000.00
	Scanning Platform			
1	EC-5 Table	TBD	30,000.00	\$ 30,000.00
			Subtotal	\$ 30,000.00
			SUBTOTAL	\$ 888,000.00
			DISCOUNT	\$ 201,450.00
			DISCOUNTED SUBTOTAL	\$ 686,550.00
			SHIPPING AND HANDLING	\$ 8,500.00
			RIGGING (if applicable)	\$ 4,950.00
			TOTAL	\$ 700,000.00

PURCHASER IS RESPONSIBLE FOR ALL SALES AND/OR USE TAX

TERMS AND CONDITIONS OF SALE

All purchases of equipment ("Equipment") from NeuroLogica Corporation (the "Seller") by the purchaser ("Purchaser") shall be governed by these terms and conditions of sale (these "Terms"). These Terms and any exhibits shall control over any conflicting, inconsistent or additional terms or conditions or any purchase order of Purchaser (including any terms and conditions of Purchaser) and all such conflicting, inconsistent or additional terms are rejected by Seller and shall have no effect.

1. ORDERS. All orders to purchase Equipment shall be made in writing and shall be subject to the written acceptance of the Seller. Seller shall not be obligated to accept any requested delivery/receipt date that is less than thirty (30) calendar days from the date of the relevant Purchase Order.

2. QUOTATIONS AND PRICES. Seller's prices and quotations are subject to the following:

(a) Quotations are only solicitations for offers and not offers which may be accepted by the Purchaser. All prices quoted herein are valid for the period of time provided under "Valid Until" date contained in the quotation. If a purchase order is not delivered to, and accepted by, NeuroLogica by the "Valid Until" date, then the quotation shall be deemed withdrawn as of such date, unless earlier withdrawn by notice to Purchaser by Seller.

(b) Published prices are subject to change without notice.

(c) All prices quoted shall be exclusive of the costs of transportation or insurance, taxes, including without limitation, any sales, use or similar tax, license fees, customs fees, duties and other charges related thereto, which shall be the responsibility of Purchaser. Any such costs shall be separately itemized on Seller's invoices and paid by Purchaser, or, in lieu thereof, Purchaser shall furnish Seller a properly executed tax exemption certificate prior to shipment.

(d) All prices and quotations and any discussion regarding the same are confidential and proprietary information of the Seller and may not be disclosed to any third party.

3. TERMS OF PAYMENT. Payment shall be made in U.S. Dollars. Payment is due thirty (30) days from the date of invoice. Late payment penalties will apply to late payments. All sales are subject to prior credit approval by Seller. If the above terms of payment are not met, Seller may, in its sole discretion, in addition to other remedies, withhold all warranty service, training and technical service and support.

4. TRANSPORTATION AND RISK OF LOSS. All shipments shall be F.O.B. Danvers Massachusetts and title and risk of loss of damage shall pass to Purchaser upon delivery to carrier by Seller. Seller does not accept any liability for losses or added costs due to delivery delays.

5. SECURITY INTEREST. Seller shall retain a security interest in the Equipment until the entire balance of the Equipment price and all other monies payable hereunder are paid in full. Purchaser shall execute, upon request by Seller, financing statements deemed necessary or desirable by Seller to perfect its security interest in the Equipment. Purchaser authorizes Seller to file a copy of this security agreement or a financing statement with the appropriate state authorities at any time thereafter as a financing statement in order to perfect Seller's security interest. A financing statement may be filed without Purchaser's signature on the basis of this security agreement where allowed by law. Purchaser shall keep the Equipment in good order and repair until the purchase price has been paid in full and shall promptly pay all taxes and assessments upon purchase of the Equipment or use of the Equipment.

6. INSURANCE. Purchaser shall maintain adequate and appropriate insurance policies in relation to its obligations under these Terms, which shall include property damage insurance to the Equipment for the full replacement value thereof. Until full payment for the Equipment has been made, Seller shall be added as an additional loss payee on such insurance policies. As evidence of such coverage, prior to shipment of the Equipment, Purchaser shall provide to Seller a certificate of insurance.

7. INSTALLATION AND ACCEPTANCE. Purchaser shall provide a suitable installation environment and the Site shall be ready to receive the Equipment at the time scheduled for the delivery date. Purchaser shall provide adequate working space within reasonable distance of the Equipment for use by Seller's personnel. Seller or its representatives shall install the Equipment during Purchaser's normal working hours. Equipment shall be deemed accepted by Purchaser unless written notice of nonconformity is received within fourteen (14) days of installation. Use of Equipment by Purchaser or any of its agents, employees, or licensees, for any purpose (other than to determine that it meets specifications) after delivery thereof shall constitute acceptance.

8. WARRANTY. SELLER WARRANTS TO PURCHASER THAT THE EQUIPMENT SHALL BE IN GOOD WORKING ORDER ON THE DATE OF DELIVERY AND THAT THE EQUIPMENT SHALL BE FREE FROM DEFECTS IN MATERIAL AND WORKMANSHIP AT THE TIME OF DELIVERY AND FOR A PERIOD OF FIFTEEN MONTHS (15) THEREAFTER. SELLER'S OBLIGATIONS UNDER THE FOREGOING WARRANTY SHALL BE LIMITED SOLELY TO SELLER MAKING, AT ITS COST AND EXPENSE, SUCH REPAIRS AND REPLACEMENTS AS ARE NECESSARY TO PLACE THE EQUIPMENT IN GOOD WORKING ORDER AND TO CONFORM THE EQUIPMENT TO SELLER'S PUBLISHED SPECIFICATIONS. NOTWITHSTANDING THE FOREGOING, THE WARRANTY PROVIDED HEREIN SHALL BE VOID IN THE EVENT (1) THE EQUIPMENT FAILS, MALFUNCTIONS OR IS DAMAGED AS A RESULT OF IMPROPER HANDLING, MAINTENANCE, REMOVAL, MODIFICATION OR REPAIR BY PURCHASER OR A THIRD PARTY (NOT AUTHORIZED BY SELLER); OR (2) THE EQUIPMENT IS ACCIDENTALLY DAMAGED, SUBJECT TO ABUSE OR IMPROPER USE; OR (3) THE EQUIPMENT IS ALTERED OR DAMAGED SUCH THAT SELLER IS UNABLE TO VERIFY THE DEFECT WITH ITS NORMAL TEST EQUIPMENT. AS A FURTHER CONDITION OF THIS WARRANTY, PURCHASER IS REQUIRED TO REQUEST AND ALLOW THE SELLER'S SERVICE REPRESENTATIVE TO COMPLETE ALL ROUTINE MAINTENANCE ACCORDING TO THE ROUTINE MAINTENANCE SERVICE SCHEDULE. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. LIMITATION OF LIABILITY. NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN ANY WAY CONNECTED WITH THESE TERMS OR THE SALE AND PURCHASE OF THE EQUIPMENT, THE EQUIPMENT ITSELF OR ANY OTHER MATTER RELATED HERETO, INCLUDING WITHOUT LIMITATION, LOST BUSINESS OR LOST PROFITS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SELLER'S AGGREGATE LIABILITY TO PURCHASER ARISING OUT OF THESE TERMS OR THE SALE AND PURCHASE OF THE EQUIPMENT SHALL NOT EXCEED THE SUM PAID TO SELLER BY PURCHASER FOR THE EQUIPMENT SOLD HEREUNDER. IT IS FURTHER AGREED THAT SELLER SHALL HAVE NO LIABILITY TO PURCHASER, PURCHASER'S PATIENTS, OR ANY THIRD PARTIES FOR ANY DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES CONCERNING THE EQUIPMENT, UNLESS SUCH DAMAGES ARE A DIRECT RESULT OF SELLER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; PROVIDED, HOWEVER, THAT NOTHING IN THIS AGREEMENT SHALL DEPRIVE PURCHASER OF ANY RIGHTS IT MAY HAVE AGAINST ANY PERSON OTHER THAN SELLER.

10. INTELLECTUAL PROPERTY. No rights to any intellectual property residing in the Equipment, software, documentation, or any data furnished hereunder are granted except the right to use such intellectual property. Purchaser recognizes that, among other items, computer software necessary to the operation of the Equipment is confidential information belonging to Seller. Purchaser shall have no right to copy, reproduce or disclose to others in whole or in part any of the above without the prior written permission of Seller.

11. INDEMNITY. As an express condition of sale, Purchaser agrees to hold Seller and its parent, owners, subsidiaries and affiliates and their directors, officers, shareholders, employees and agents harmless from and against any claims, suits, losses, liabilities, injuries or damages (including, without limitation, reasonable attorneys' fees and litigation expenses) arising out of or in connection with: (i) use of the Equipment not in accordance with the Documentation; and (ii) all actions or omissions by Purchaser personnel (including employees and independent contractors) who use the Equipment. Seller agrees to hold Purchaser, its parent, owners, subsidiaries and affiliates and their directors, officers, shareholders, employees and agents harmless from and against any claims, suits, losses, liabilities, injuries or damages (including, without limitation, reasonable attorneys' fees and litigation expenses) arising out of or in connection with (i) any third party claims that the Equipment caused injury solely as a result of Seller's gross negligence or due to defects in material or workmanship of the Equipment for which Seller is legally liable.

12. GOVERNING LAW. These Terms shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to its provisions on conflicts of laws. Seller and Purchaser hereby submit to the jurisdiction of the state and federal courts located in the Commonwealth of Massachusetts and agree not to contest the jurisdiction of such courts. No action, regardless of form, arising out of, or in any way connected with, the Equipment or any service furnished, or to be furnished, may be brought by Purchaser more than (1) one year after the cause of action has accrued to Purchaser.

13. FORCE MAJURE. Neither party shall be liable for any delay in performance, not to exceed six months, caused by any occurrence beyond its reasonable control, including but not limited to acts of God, power outages, wars, commencement or escalation of hostilities, terrorist acts, industrial disputes and governmental restrictions, strikes, labor disputes, floods, fires, accidents, and any such delay, not to exceed six months, shall not be considered a breach of this Agreement and such performance shall be excused for the number of days such occurrence reasonably prevents performance.

14. SEVERABILITY. Each provision of these Terms shall be severable. If, for any reason, any provision herein is finally determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation by a court or agency having valid jurisdiction, such determination shall not impair the operation or affect the remaining provisions of these Terms, and such remaining provisions will continue to be given full force and effect and bind the parties hereto. Each invalid provision shall be revised only to the extent necessary to bring it within the requirements of such law or regulation.

15. ENTIRE AGREEMENT; NO WAIVER. These Terms, along with any purchase order and any and all exhibits hereto represents the entire understanding of the parties hereto and supersedes any prior understandings or agreements (whether oral or in writing) relating to the subject matter hereof. None of the terms of this Agreement can be waived, amended or modified except by an express agreement in writing signed by the parties. There are no representations, promises, warranties, covenants or undertakings other than those contained in this Agreement. No custom or practice of the parties hereto at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with any of the terms herein at any time. The failure of either party hereto to enforce, or the delay by either party hereto in enforcing, any or all of its rights under these Terms shall not be deemed as constituting a waiver or a modification thereof, and either party hereto may, within the time provided by applicable law, commence appropriate proceedings to enforce any or all of such rights.

NeuroLogica

A Subsidiary of Samsung Electronics Co., Ltd

Neurologica Corporation
 A Subsidiary of Samsung Electronics Co., Ltd
 14 Electronics Ave
 Danvers, MA 01923
 Phone: 978.564.8500
 Prepared by: Sarah Shotmeyer

QUOTE

DATE:	07/28/2020
QUOTE #	QTE00240
Customer ID	TBD
Valid Until:	09/16/2020

Customer
 Dane County Medical Examiner's Office

DESCRIPTION	UNIT PRICE	AMOUNT
BodyTom SmartCare Contract SN TBD 3 Year Contract	1	255,000.00
Multi Year Discount	1	-12,750.00

NOTES

Subtotal	\$242,250.00
Misc	\$0.00
Tax	0.000%
Tax due	\$0.00
Other	\$0.00
TOTAL Due	\$242,250.00

x _____
 Print Name:
 Email Address:

If you have any questions about this price quote, please contact
 Sarah Shotmeyer, 978-564-8610, sshotmeyer@neurologica.com

Thank You For Your Business!

Additional Terms And Conditions

1. **NeuroLogica Responsibilities.** During the term of this Agreement, NeuroLogica will provide the Services listed on the facing page under the heading "Schedule of Services." The following shall be applicable to the Services:
 - (a) **Preventative Maintenance.** NeuroLogica will contact Customer quarterly yearly to schedule preventative maintenance visits on mutually convenient weekdays between the hours of 8:00 a.m. and 5:00 p.m.
 - (b) **Unscheduled Service.** NeuroLogica will use best efforts (within reason) to have a service technician on site within the time period set forth in the facing page of this Agreement under "Schedule of Services" (or as soon as practicable thereafter). Customer acknowledges that NeuroLogica cannot and does not absolutely guarantee response time to service calls.
 - (c) **Modifications for Safety or Reliability.** If NeuroLogica determines that a modification to the System (whether hardware or software) is necessary to address safety or reliability concerns identified by NeuroLogica, then NeuroLogica will install the modification in the System as soon as practicable.
2. **Customer Obligations.** Customer's obligations are as follows:
 - (a) **Payments.** Customer will pay all NeuroLogica invoices within 30 days. If Customer is tax exempt, Customer shall provide NeuroLogica a valid tax exemption certificate or other acceptable evidence.
 - (b) **Tests.** Customer will conduct such tests of the System and submit the results in such format at such times as NeuroLogica reasonably requests. Customer agrees to maintain telephone line connectivity to allow NeuroLogica to monitor remote diagnostic logs and allow for timely preventive maintenance visits.
 - (c) **Conformity with Manuals.** Customer will comply in all material respects with the manuals and instruction materials provided by NeuroLogica regarding this System, its use and its maintenance.
 - (d) **Cooperation.** Customer will cooperate with NeuroLogica in performing its duties including the scheduling of service calls and providing access to the System, an acceptable work environment for NeuroLogica personnel at the Installation Site, and adequate space for storage of spare parts, tools and the like. Customer bears the risk of loss for spare parts stored at the Installation Site.
 - (e) **Installation Site.** Customer will maintain the Installation Site in accordance with NeuroLogica's recommendations and will not move, permit the movement of or tamper with the System without NeuroLogica's prior knowledge and direct participation. Please notify NeuroLogica if the equipment covered under this contract is to be relocated to an address different than the "Installation Site" listed in this agreement. Additional fees may be incurred in order to maintain coverage at the new location. Customer agrees that system will not be used in a Biosafety Level (BSL) environment for the duration of this agreement. This includes Biosafety Level 1, 2, 3, or 4.
 - (f) **No Outside Services.** Customer will not permit anyone other than NeuroLogica's service representative or its authorized subcontractors to perform maintenance, to repair or to adjust the System.
 - (g) **No Unapproved Part.** Customer will use only NeuroLogica approved parts in the System and only NeuroLogica approved disposables with the System.
 - (h) **Customer Presence.** For the safety of NeuroLogica's personnel, Customer or one of its representatives will be present at the Installation Site at all times when a NeuroLogica person is servicing the System.
3. **Exclusions.** This Agreement does not entitle Customer to, or obligate NeuroLogica to provide, any service or products not specifically identified in paragraph 1 hereof. Without limitation, the Services *do not* include: (a) any repairs or service attributable to Customer's failure to comply with any of its obligations under Paragraph 2 or to (a) improper use, mishandling, alterations; (b) maintenance by anyone other than NeuroLogica or its authorized subcontractors; (c) accidents, casualty loss, other acts of God; (d) any disposable products, consumable supplies; (e) services associated with relocation, installation (such as site preparation) or removal or disposal of the System; or (f) any costs of materials, supplies, parts, or labor supplied by any party other than NeuroLogica or its authorized subcontractors. Services or products not included in the Agreement Services may be purchased from NeuroLogica on a case-by-case basis at NeuroLogica's then current charges if such services are then available from NeuroLogica
4. **Charges and Invoicing.** The Customer will pay NeuroLogica one month prior to the Effective Date and on each succeeding anniversary date for multi-year contracts. NeuroLogica will invoice the Customer periodically as per NeuroLogica terms. NeuroLogica will invoice Customer for other services as incurred. All invoices must be paid in full within 10 days. After 30 days, interest on the unpaid balance will accrue at 1% per month or the maximum rate permitted by applicable law, whichever is less. Prices are quoted exclusive of taxes. Customer will pay (or reimburse NeuroLogica for) all applicable taxes. Without limiting any other rights and remedies available to NeuroLogica, non-payment of invoices when due will result in, at NeuroLogica's option (a) suspension of services under this contract until a reasonable time after all defaults have been cured; (b) all sums shall be due and payable; (c) termination of this Agreement with 10 days' notice to Customer; and/or (e) pursue any other remedies permitted by law. If NeuroLogica retains a collection agency and/or attorney to collect overdue amounts, all collection costs, including attorney's fees and expenses, shall be payable by Customer.
5. **Term and Termination.** The term of this Agreement shall be set forth on the facing page. If this is a one-year Agreement, this Agreement shall have a term of one year commencing on the Effective Date. If this is a multi-year agreement, this Agreement shall have a term commencing on the Effective Date. Each twelve-month period following the Effective Date is referred to as an "Agreement Year." This Agreement is non-cancellable by Customer and will remain in effect for the term specified in this Agreement. However, this Agreement may be terminated by either party immediately (a) upon 30 days' written notice to the other if the other breaches one or more of its material obligations hereunder, provided such breach is not cured by the end of such 30 day period; or (b) if the other party makes or offers to make any arrangement or composition with creditors or commits any act of bankruptcy, or if any petition or receiving order in bankruptcy is presented or made against the other party, or if any resolution to wind up the other party is passed. If Customer terminates for an uncured breach by NeuroLogica under subsection (a) above, Customer shall receive a pro-rated refund of the service fee paid to NeuroLogica. No refund shall be issued if this Agreement is terminated for any other reason.
6. **Limited Warranty, Force Majeure and Limitation of Liability.** NeuroLogica warrants that the services provided hereunder will be performed in a workmanlike manner in accordance with reasonable commercial standards. NeuroLogica does not warrant that the operation of the System will be uninterrupted or error free. THE WARRANTY STATED IN THE FIRST LINE OF THIS SECTION AND REMEDIES SET FORTH HEREUNDER ARE EXCLUSIVE OF AND IN LIEU OF ALL OTHERS, ORAL OR WRITTEN, EXPRESS, IMPLIED OR STATUTORY, RESPECTING THIS AGREEMENT, AND THE MAINTENANCE SERVICES AND PARTS PROVIDED HEREUNDER, NEUROLOGICA MAKES NO OTHER REPRESENTATIONS, WARRANTIES OR INDEMNIFICATION INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE RESPECTING THIS AGREEMENT OR THE SERVICES AND PRODUCTS PROVIDED HEREUNDER.
7. **Limitation of Liability.** NeuroLogica will neither be deemed in default of any obligation hereunder nor will NeuroLogica be liable for any failure or delay in performance which results directly or indirectly from "Acts of God," acts of civil or military authorities, civil disturbance, war, strikes, fire, theft or vandalism, terrorism, embargoes, accidents, delays of carriers, subcontractors or suppliers, voluntary or mandatory compliance with any government act, regulation or request or other causes beyond NeuroLogica's reasonable control. IN NO EVENT SHALL NEUROLOGICA BE LIABLE TO CUSTOMER FOR (A) ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, EVEN IF NEUROLOGICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) ANY DAMAGES RESULTING FROM LOSS OF USE, PATIENTS OR PROFITS, OR ANY DEFECT IN THE SYSTEM, WHETHER IN AGREEMENT OR TORT ACTION, INCLUDING NEGLIGENCE. IN NO EVENT SHALL NEUROLOGICA'S LIABILITY EXCEED THE TOTAL MAINTENANCE CHARGES PAID OR PAYABLE WITH RESPECT TO THE SYSTEM DURING THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE OF THE DAMAGE. Customer acknowledges that the charges which apply to the Agreement Services are based in part upon the limited warranty and limitation of liabilities and remedies set forth in this Agreement.
8. **Right to Subcontract.** NeuroLogica reserves the right to subcontract the Services to qualified third parties. In such event, the rights and obligations of NeuroLogica and Customer will not be diminished.
9. **Parts.** NeuroLogica reserves the right to use new, used, reconditioned or refurbished parts in performing its obligations hereunder provided such parts are equivalent to new in performance and reliability. All parts removed from the System for replacement become the property of NeuroLogica.
10. **IP Ownership.** As between Customer and NeuroLogica, NeuroLogica will exclusively own all rights in and to any inventions, improvements, or technology created, developed, or made by any employee or contractor of NeuroLogica in connection with the performance of the Services.
11. **Confidentiality.** Customer agrees to maintain and protect the confidentiality of any of NeuroLogica's proprietary product, technical and business information or documentation, or any other information that may be disclosed to or provided to

ADDITIONAL TERMS AND CONDITIONS

Customer or acquired by Customer or personnel of Customer in the course of NeuroLogica's performance hereunder, and further agrees not to use, disclose, reproduce or dispose of such information in any manner except as necessary in the course of Customer's performance hereunder.

12. **Amendment.** This Agreement may not be altered, modified or amended, except by a subsequent writing signed by both parties.
13. **Non-Assignment.** Customer may not assign any of its obligations, rights or remedies under this Agreement and any attempted such assignment shall be null and void.
14. **Non-Waiver.** The failure or delay of either party to exercise any right or remedy provided for herein shall not be deemed a waiver of that right or remedy or of any other rights or remedies available hereunder.
15. **Entire Agreement.** This Agreement, including all the schedules hereto, contains the entire understanding of Customer and NeuroLogica with respect to the Services provided hereunder and supersedes all prior oral or written communications with respect to the subject matter hereof. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.
16. **Severability.** If any provision or portion of this Agreement is held to be unenforceable or invalid, the remaining provisions and portions thereof shall nevertheless be given full force and effect, and the parties agree to negotiate, in good faith, a substitute valid provision which most nearly effects the parties' intent in entering this Agreement. Without limiting the foregoing, it is expressly understood and agreed that each and every provision of this Agreement which provides for a limitation of liability, disclaimer of warranty or exclusion of damages is intended by the parties to be survivable and independent of any other provisions. Further, in the event that any remedy hereunder is determined to have failed of its essential purpose, all limitations of liability and exclusions of damages shall remain in effect.
17. **Independent Contractor.** The parties are acting hereunder as independent contractors and not as partners, agents, fiduciaries, or joint venturers. Neither party has the power or authority represent, act for, bind, or otherwise create or assume any obligation on behalf of the other party.
18. **Notices.** All notices hereunder shall be in writing and shall be deemed to have been duly given when delivered in hand, when sent by registered or certified mail, return receipt requested, or when sent by commercial overnight courier (such as Federal Express), to the address stated herein. From time to time, either party may designate a different address by giving notice of change of address in the manner herein provided.
19. **HIPAA, Privacy.** NeuroLogica complies with all applicable provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). Upon Customer request NeuroLogica will provide a mutually agreeable Business Associates agreement. In the course of providing the Services to Customer, NeuroLogica may need to access, view, or download computer files from the System that might contain Personal Data. Personal Data includes information relating to an individual, from which that individual can be directly or indirectly identified. Personal Data can include both personal health information (e.g., images, heart monitor data, and medical record number) and non-health information (e.g., date of birth and gender). NeuroLogica will process Personal Data only to the extent necessary to fulfill its Service obligations under this Agreement.