

## aBSI DATA PROCESSING SERVICE AGREEMENT

This aBSI Data Processing Service Agreement (“**Agreement**”) sets forth a legally binding agreement between you or the entity you represent (“**you**” or “**your**”) and EXINI Diagnostics AB, located at Scheelevagen 27, 223 70 Lund, Sweden, info@exini.com (“**EXINI**,” “**we**,” “**our**,” or “**us**”), with respect to your use of the Software (defined below). EXINI and you may be referred to in this Agreement individually as a “**Party**” and collectively as the “**Parties**.” This Agreement takes effect when you click an “I Accept” button or check box presented with these terms or, if earlier, when you use the Software or when both Party have signed this Agreement on the signature block below (the “**Effective Date**”).

This Agreement has been updated to ensure the Parties’ compliance with Article 28, sub-section 3 of Regulation 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation), which sets out specific requirements for the content of data processing agreements.

### 1.0 DEFINITIONS

**A.** “**Agreement**” has the meaning set forth in the first paragraph and includes this document, the Business Associate Agreement between you and EXINI attached hereto as Appendix 1 and incorporated by reference herein, and any amendments hereto.

**D.** “**Confidential Information**” means any and all data disclosed by one Party to the other Party pursuant to this Agreement that the disclosing party protects as confidential or proprietary, including but not limited to this Agreement, technology, processes, calculations, models, reports, graphs, databases, trade secrets, lists, designs, financial information, business plans, strategies, records and other data that is not (a) disclosed in public materials or otherwise in the public domain through no action or disclosure by the receiving party; (b) lawfully obtained from a third party by the receiving party without any obligation of confidentiality; (c) lawfully known to the receiving party prior to disclosure by the disclosing party; or (d) independently developed by the receiving party. EXINI’s Confidential Information includes any data concerning the Software and the EXINI Data. Your Confidential Information includes Patient Data and any reports and graphs generated through your use of the Software. For the avoidance of doubt, Confidential Information does not include Deidentified Patient Data.

**E.** “**Deidentified Patient Data**” means Patient Data that has been processed to remove, hide, encrypt, anonymize or aggregate individually identifiable health information in accordance with 45 CFR 164.514(a)-(b) of the Health Insurance Portability and Accountability Act (“HIPAA”) Privacy Rule.

**F.** “**Equipment**” means equipment, machines, modality systems, computers, computer networks, computer applications, storage devices, mobile computing devices, or software.

**G.** “**EXINI Data**” means any user data (a) collected by the Software (except Patient Data); or (b) provided to you by EXINI in connection with the Software or this Agreement.

**H.** “**Marks**” means EXINI’s names, logos, emblems, brands, service marks, trademarks, trade names, taglines or other proprietary designations.

**I.** “**Patient Data**” means uploaded bone images, and any patient’s personal Information you directly input through the Software or provide to EXINI.

**J.** “**Personal Information**” means any data from which an individual may be identified, including without limitation an individual’s name, address (including but not limited to state and/or zip code), location, telephone number, internet protocol address, date of birth, social security number, passwords, pin numbers, account relationships, account numbers, account balances, account histories, employment information, compensation information, family information, tax information, health or medical information, eligibility for benefits, benefit elections, claims information, gender, job title, and “personal information”, “nonpublic personal information”, “protected health information” (and other similar information, however described) as defined in any applicable Privacy Laws.

**K.** “**Privacy Laws**” means all applicable laws, standards, guidelines, policies, regulations, and procedures pertaining to security, confidentiality or privacy.

**L.** “**Security Breach**” means any reasonably suspected or actual acquisition or use of, or access to, Confidential Information by unauthorized persons.

**M.** “**Software**” means the web-based aBSI Software as a medical device service offering (in whole or in part), including all technology, processes, calculations, models, reports, values, imaging biomarkers, databases and other Confidential Information therein.

## 2.0 DATA PROCESSING

**A. Purpose.** On behalf of data controller, the sole purpose of data processing is for display and generate automatic quantitative analysis, of whole body bone scintigraphy using <sup>99m</sup>Tc-labelled radiopharmaceuticals. The system is a software as a medical device that is intended to be used with images acquired using nuclear imaging (NM). Based on our Artificial Neural Network (ANN), the product provides you with a feature, which automatically suggests a pre-selection of the hotspots. The software quantifies the hotspots, calculates and presents the Bone Scan Index value (BSI). BSI is a measure reflecting the tumor burden in bone as a percentage of the total skeletal mass calculated from bone scintigraphy. EXINI as the Data Processor shall have and maintain the aBSI processing activity in accordance with GDPR, article 32 (2).

**B. Data for aBSI Processing.** All data associated with patient’s bone scan images that is required for aBSI processing. The data may include but not limited to – patient’s name, age,

gender, national identification number, hospital patient identification number, BirthDate, StudyInstanceUID, StudyDescription, StudyDate, StudyID, AccessionNumber.

- C. Duration of Processing.** Processing shall not be time-limited and shall be performed until the user account (and thereby this Agreement) is terminated or cancelled by one of the Parties as defined by section 8.0 of this Agreement.
- D. Restriction.** EXINI shall solely be permitted to process personal data on documented instructions from the Data Controller unless processing is required under EU or Member State law to which the Data Processor is subject; in this case, the Data Processor shall inform the Data Controller of this legal requirement prior to processing unless that law prohibits such information on important grounds of public interest, cf. Article 28, sub-section 3, para a. EXINI shall immediately inform the Data Controller if instructions in the opinion of the Data Processor contravene the General Data Protection Regulation or data protection provisions contained in other EU or Member State law.

### 3.0 DATA RIGHTS AND SOFTWARE AND DATA LICENSES

**A. Data Ownership.** EXINI is the sole and exclusive owner of the EXINI Data. EXINI has the right to use, collect, store, create, aggregate, mine, analyze, or transfer EXINI Data in any form, for the sole purpose described in section 2 A of this Agreement. You are the sole and exclusive owner of Patient Data and any reports and graphs generated through your use of the Software to the extent those reports and graphs include Patient Data and/or Deidentified Patient Data. You are solely responsible for ensuring that Patient Data complies with all applicable Privacy Laws and any other applicable local, state, federal, and international laws, rules, and regulations. Where required by applicable Privacy Laws, you shall cause your patients to consent to the collection and sharing of Patient Data with EXINI, and provide and obtain any disclosures or consents that may be required in connection with your use of the Software.

**B. License to use the Software.** EXINI grants you a limited, non-exclusive, revocable, non-assignable, and non-transferable license, without the right to sublicense or assign in any way, to use the Software during the term of this Agreement for the purposes set forth in this Agreement.

**C. License to use Patient Data.** You grant EXINI a limited, non-exclusive, revocable, royalty-free, non-assignable, and non-transferable license to use Patient Data during the term of this Agreement for the purposes described in section 2 A of this Agreement.

### 4.0 PERMITTED USE AND RESTRICTIONS

**A. Healthcare Purposes.** The Software is intended to be used by trained healthcare professionals and researchers for acceptance, transfer, storage, image display, manipulation, quantification, and reporting of digital medical images. The Software provides general Picture Archiving and Communications System (PACS) tools and a clinical application for markup and

analysis of bone lesions in bone scans. You agree that you: (a) will limit use of the Software to your employees; and (b) will only use the Software for purposes set forth in section 2.A.

**B. Equipment and Facility.** The Software may only be used on Equipment controlled by you and located at secure facilities controlled by you.

**C. Accounts.** In order to use the Software, you must first register and create an account using the Invite ID provided to you. When creating an account, you agree to: (a) provide true, accurate, current, and complete information about yourself and/or your business; (b) maintain and update this information to keep it true, accurate, current, and complete; and (c) prevent unauthorized access to your account and the Software. You are solely responsible for any activities that occur on your account, whether or not authorized by you, and ensuring that Patient Data and any reports and graphs generated through your use of the Software are kept safe and confidential. To the extent the Software allows you to share your Patient Data and any reports and graphs generated through your use of the Software with other users, you agree that you are solely responsible for obtaining any legally required consents from your patients or other third parties for such sharing. To the extent the Software allows you to invite non-users to create accounts through the Software, you agree that you are solely responsible for obtaining any legally required consents from those non-users for the sending of such invitations. If you delete your account, EXINI will delete your Patient Data and any reports and graphs generated through your use of the Software (unless otherwise required by applicable law or necessary to protect EXINI's rights); however, if you have shared your Patient Data or any reports and graphs generated through your use of the Software with other users of the Software, any shared information will not be deleted unless those other users also delete their accounts.

**D. Two-Factor Authentication.** EXINI may use two-factor authentication to verify the identity of its users. By providing a phone number to EXINI, you agree that EXINI may send you a security code via text message or prerecorded call (including by automatic telephone dialing system) every time you attempt to log-in to the Software in order to verify your identity. Standard message, data, and other fees may be charged by your carrier. EXINI has the right to rely on email addresses, phone numbers, passwords, other signor credentials, and any other access controls for the Software to authenticate access to, and use of, the Software.

**E. Software Operation and Images.** The Software is intended to be used with images acquired using the nuclear imaging (NM) modality. You shall at all times comply with any operating procedures, requirements, or guidelines regarding your use of the Software that are posted on EXINI's website or otherwise provided or made available to you. EXINI is not responsible for any improper use of the Software by you.

**F. Restrictions.** You shall not, and shall not permit any third party to: (a) decompile, disassemble, reverse engineer, or otherwise attempt to reconstruct or discover by any means any source code, underlying ideas or algorithms of the Software, except to the extent that such restriction is expressly prohibited by law; (b) modify, translate, or alter in any manner, the Software, or the Marks; (c) create derivative works of or based on the Software, or the Marks; (d) except for backup and archival purposes, directly or indirectly copy the Software; (e) republish, upload, post, transmit, disclose, or distribute (in any format) the Software except as

permitted in this Agreement; (f) resell, rent, lease, or otherwise permit third parties to use the Software, use the Software to provide services to third parties, or use the Software, or EXINI's Confidential Information (as defined below) to create a product that competes with the Software; (g) use, ship, export, or access the Software, outside or from outside of the United States or European Union; (h) remove, relocate, or otherwise alter any proprietary rights notices from the Software or the Marks; (i) perform or attempt to perform any actions that would interfere with the proper working of the Software; or (j) use the Marks in any manner, including in any advertisements, displays, or press releases, without EXINI's prior written consent.

## 5.0 INTELLECTUAL PROPERTY RIGHTS

**A. Software Rights.** All right, title and interest in and to all Confidential Information and intellectual property related to the Software (including Marks), all software, the content of any materials, web screens, layouts, processing techniques, procedures, algorithms, and methods and any updates, changes, alterations, or modifications to or derivative works from such intellectual property), owned, developed or licensed by EXINI at any time or employed by EXINI in connection with the Software, shall be and remain, as between EXINI and you, EXINI's or its affiliates', EXINI's vendors' or licensors' (as applicable) sole and exclusive property and all right, title and interest associated with the Software not expressly granted by EXINI in this Agreement are deemed withheld. You will not, directly or indirectly take any action inconsistent with the stated title or ownership in this Section 4.A. or infringe on EXINI's intellectual property rights. You will not file any action, in any forum that challenges the ownership of any part of the Software, any related software, materials or documentation.

**B. Submissions.** You may submit comments or ideas about the Software, including about how to improve the Software. By submitting any idea, you agree that: (a) EXINI expressly disclaims any confidentiality obligations or use restrictions, express or implied, with respect to any idea; (b) your submission will be non-confidential; and (c) EXINI is free to use and disclose the idea on an unrestricted basis without notifying or compensating you. You release EXINI from all liability and obligations that may arise from EXINI's receipt, review, use or disclosure of any portion of any idea. You are responsible for any electronic communications sent to EXINI or to any third party containing Patient Data or any reports and graphs generated through your use of the Software.

## 6.0 SOFTWARE MAINTENANCE AND DISRUPTIONS

**A. Maintenance.** EXINI may perform maintenance of the Software which may result in service interruptions, delays, or errors. EXINI will not be liable for any interruptions, delays, errors, or bugs. EXINI may contact you in order to assist you with the Software and obtain information needed to identify and fix any errors.

**B. Updates.** EXINI may, at its discretion, release enhancements, improvements or other updates to the Software. EXINI shall have no obligation to provide support or services for any outdated versions. You shall not, in any event or in any manner, impede the update process. You agree to assume full responsibility and indemnify EXINI for all damages and losses, of

any nature, for all adverse results or third party claims arising from your impeding the update process.

**C. Disruptions.** You agree that EXINI shall not have any liability to you arising directly or indirectly from or otherwise concerning: (a) any termination, suspension, delay or disruption of the Software by the internet, any common carrier or any third party service provider; (b) any failure, disruption or malfunction of the Software, the internet, or any communications network, facility or equipment; (c) your failed attempts to access the Software or to create reports and graphs via the Software; or (d) any failure to transmit, obtain or collect data or for human, machine or software errors or faulty or erroneous input by you.

**D. Internet Service Providers.** You are solely responsible for the payment of any fees that may be imposed by your internet/data provider. Your use of the Software accessed wirelessly or through the internet is subject to: (a) the terms of any agreements you have with your internet/data provider; and (b) availability, transmission range and uptime of the services and any wireless equipment.

## 7.0 FEES

The Software is available to you free of cost, subject to your compliance with this Agreement. Notwithstanding the foregoing, each Party shall be responsible for its own taxes, including income, employees, property, sales, use, excise, value-added, goods and services, consumption, and similar taxes or duties. This Section 7 is not intended to limit the remedies available to EXINI in the event of a breach of the Agreement by you. EXINI reserves the right to charge a fee associated with your use of the Software upon thirty (30) days' notice to you.

## 8.0 TERM AND TERMINATION

**A. Term.** The term of this Agreement commences as of the Effective Date and shall remain in full force and effect unless earlier terminated in accordance with Sections 8.B. or 8.C. of this Agreement.

**B. Termination by EXINI.** EXINI may terminate this Agreement and/or permanently or temporarily terminate, suspend, or otherwise refuse to permit your access to the Software at any time without any notice and liability for any reason.

**C. Termination by You.** You may terminate this Agreement at any time for any reason by deleting your account.

**D. Effect of Termination.** Upon termination of this Agreement for any reason, your license to use the Software shall end. You shall immediately discontinue using the Software. You shall return or destroy, at EXINI's discretion, the EXINI Data and EXINI's other Confidential Information within thirty (30) days of termination.

**E. Data Erasure.** Data Subject to applicable law and EXINI's data retention policies, upon termination, EXINI shall be under obligation, at the Data Controller's discretion, to erase or return all the personal data to the Data Controller and to erase existing copies unless EU law or Member State law requires storage of the personal data.

## 9.0 CONFIDENTIALITY AND DATA PROTECTION

**A. Disclosure and Treatment.** The Party shall from time to time disclose to each other Confidential Information in connection with the performance of this Agreement. A Party receiving Confidential Information pursuant to this Agreement shall treat all Confidential Information provided by the disclosing party as proprietary and confidential to the disclosing party. The receiving party shall safeguard all Confidential Information of the disclosing party with at least the same degree of care (and in no event less than reasonable care) as the receiving party uses to protect its own Confidential Information of like kind. The receiving party shall use the disclosing party's Confidential Information solely for the purpose of fulfilling its obligations under this Agreement and shall not use or disclose such Confidential Information for its own benefit or for the benefit of others, except as otherwise authorized by this Agreement or by the disclosing party in writing. The receiving party shall not disclose or permit disclosure of the disclosing party's Confidential Information to anyone except as follows: (a) to the receiving party's employees, officers, or directors, or legal or financial representatives on a need-to-know basis for performance of the receiving party's obligations under this Agreement; and (b) to a third party acting as the receiving party's agent in furtherance of this Agreement provided that the receiving party has contractually imposed upon the third party the same or substantially similar contractual duties imposed on the receiving party, and rights provided to the disclosing party, as in this Agreement. The receiving party is and shall remain fully responsible for any act, error or omission of any third party retained by the receiving party with respect to this Agreement. Within thirty (30) days of termination of this Agreement or at EXINI's request, you shall return or destroy, at EXINI's discretion, the EXINI Data and EXINI's other Confidential Information in your possession or control. Upon request by EXINI, you shall provide written certification that all such Confidential Information has been returned or deleted.

**B. Cooperation.** A Party receiving Confidential Information pursuant to this Agreement shall cooperate with the disclosing party in responding to any non-party or government request (in the form of a subpoena, order or otherwise) that involves the disclosing party's Confidential Information. In the event that such a request is provided to or served on the receiving party regarding the disclosing party's Confidential Information, the receiving party shall notify the disclosing party in writing within thirty-four (24) hours of receiving such request. Such notification must include a copy of the request, subpoena or court order. The receiving party shall immediately inform in writing the third party who caused the request that some or all the material covered by the request is the subject of a nondisclosure agreement. The receiving party shall reasonably cooperate with disclosing party in seeking any protection from disclosure for such Confidential Information.

**C. Security.** EXINI shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk. Depending on their relevance, the measures may include the following:

1. Use of two-factor authentication to verify the identity of its users.
2. Pseudonymisation, de-identification and encryption of personal information
3. The ability to ensure ongoing confidentiality, integrity, availability and resilience of processing systems and services.
4. The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
5. A process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

## 10.0 SECURITY BREACH

Each Party shall maintain reasonable policies and procedures for responding to a Security Breach. In the event of a Security Breach, the affected Party shall immediately conduct a reasonable investigation of the reasons for and circumstances surrounding such Security Breach, use best efforts and take all necessary actions to prevent, contain, and mitigate the impact of, such Security Breach, provide prompt notice to the other Party (and, to the extent Protected Health Information is involved, consistent with the obligations set forth in the Business Associate Agreement attached hereto as Appendix 1 and incorporated by reference herein), collect and preserve all evidence concerning the discovery, cause, vulnerability, remedial actions and impact related to such Security Breach, which shall meet reasonable expectations of forensic admissibility, and, if requested by the other Party, provide notice to individuals or entities whose Personal Information was or may have been affected in a manner and format specified by the other Party. EXINI reserves the right to immediately suspend and/or terminate your access to the Software, in whole or in part, if EXINI believes that any Security Breach has occurred.

## 11.0 USE OF SUB-PROCESSORS

EXINI has the Data Controller's general consent for the engagement of sub-processors. The data controller shall on commencement of this Agreement approve the engagement of the following sub-processors:

<b>Name</b>	<b>ID</b>	<b>Address</b>	<b>Description of processing</b>
Amazon WebServices Inc.	TAX registration number NTT0415USASR008	410 Terry Ave North, Seattle, WA 98109-5210 US	GDPR and HIPAA compliant cloud server solution for the purpose of performing aBSI image service.



EXINI shall, however, inform the Data Controller of any planned changes with regard to additions to or replacement of other data processors and thereby give the Data Controller the opportunity to object to such changes. Such notification shall be submitted to the Data Controller a minimum of 1 month prior to the engagement of sub-processors or amendments coming into force. If the Data Controller should object to the changes, the Data Controller shall notify the Data Processor of this within 10 days of receipt of the notification. The Data Controller shall only object if the Data Controller has reasonable and specific grounds for such refusal.

When EXINI has the Data Controller's authorization to use a sub-processor, EXINI shall ensure that the Sub-Processor is subject to the same data protection obligations as those specified in this Agreement on the basis of a contract or other legal document under EU law or the national law of the Member States, in particular providing the necessary guarantees that the Sub-Processor will implement the appropriate technical and organizational measures in such a way that the processing meets the requirements of the GDPR.

## **12.0 NOTIFICATION OF PERSONAL DATA BREACH**

On discovery of personal data breach EXINI's facilities or a sub-processor's facilities, EXINI shall without undue delay notify the data controller. The notification to the Data Controller shall, if possible, take place within 24 after EXINI has discovered the breach to enable the Data Controller to comply with his obligation, if applicable, to report the breach to the supervisory authority within 72 hours.

EXINI shall assist the data controller in the reporting of the breach to the supervisory authority. This may mean that the EXINI is required to assist in obtaining the information listed below, which shall be stated in the Data Controller's report to the supervisory authority:

- a. The nature of the personal data breach, including, if possible, the categories and the approximate number of affected data subjects and the categories and the approximate number of affected personal data records
- b. Probable consequences of a personal data breach
- c. Measures which have been taken or are proposed to manage the personal data breach, including, if applicable, measures to limit its possible damage

## **13.0 INSPECTION AND AUDIT**

EXINI shall make available to the Data Controller all information necessary to demonstrate compliance with Article 28 of the General Data Protection Regulation and this Agreement, and allow for and contribute to audits, including inspections performed by the Data Controller or another auditor mandated by the Data Controller.

On the request of the Data Controller, EXINI at the Data Controller's expense obtain an inspection report from an independent third party with regards to compliance with this Agreement.

## 14.0 REPRESENTATION AND WARRANTIES

**A. Mutual Warranties.** Each Party warrants and represents that (a) it has obtained all authorization(s), consents and licenses necessary to fully perform this Agreement; (b) it has the right to execute the Agreement and act in accordance with its terms; and (c) the execution and performance of the Agreement are within its respective corporate powers, have been duly authorized by all necessary corporate action, do not require any consent of or filing with any third party or governmental body or agency, and do not violate any applicable law, agreement, judgment, order, or the like or their respective charter or by-laws.

**B. Your Warranties.** You warrant and represent that you will: (a) comply with all Privacy Laws applicable to your business related to your use of the Software; (b) not use the Software for any illegal or fraudulent purpose, infringe any intellectual property rights; (c) not take any of the actions prohibited or restricted by Section 4.F; (d) use commercially reasonable efforts to prevent the introduction of computer viruses, malware, or similar items (collectively, the “Virus”) into the Software, and, in the event you transfer such Virus to the Software, reimburse EXINI the documented actual cost incurred by EXINI to remove or recover from the Virus, including the costs of persons employed by EXINI; and (e) comply fully with your obligations set forth in this Agreement.

**C. EXINI’s Warranties.** EXINI warrants and represents that: (a) it will comply with all Privacy Laws applicable to its processing of Patient Data in the provision of the Software; and (b) it will comply fully with its obligations set forth in this Agreement.

**D. Disclaimer.** THE REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 14 ARE THE ONLY WARRANTIES MADE BY EITHER PARTY TO THE OTHER, AND THE PARTIES MAKE NO OTHER WARRANTIES OF ANY KIND, WHETHER STATUTORY, WRITTEN, ORAL, EXPRESSED OR IMPLIED, INCLUDING MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

## 15.0 INDEMNIFICATION

**A. By You.** You shall indemnify, defend and hold harmless EXINI and its officers, directors, employees, agents, and affiliates from and against any actual or alleged claims, damages, costs and expenses (including court costs and reasonable attorney’s fees) arising out of or relating to: (1) any actual or alleged breach of your representations, warranties, or obligations set forth in this Agreement; (2) your interference with the proper working of the Software (including through the Virus) or wrongful or improper use of the Software; (3) your violation of any third party right, including without limitation any right of privacy, publicity rights or intellectual property; (4) your violation of any applicable law, rule or regulation, including but not limited to Privacy Laws; (5) any other Party’s access and/or use of the Software with your user names, password and any other sign on credentials/access controls for the Software, or any software provided or approved by EXINI to authenticate access to, and use of, the Software; or (6) your breach of Sections 4, 5 or 9.

**C. By EXINI.** EXINI shall indemnify, defend and hold harmless you and your officers, directors, employees and affiliates from and against any actual or alleged claims, damages, costs and expenses (including court costs and reasonable attorney's fees) arising out of or relating to (1) its breach of Section 9 (Confidentiality); or (2) any third party claim that the Software infringes or misappropriates any United States or European Patent Office patent, copyright, trade secret, or trademark ("**Intellectual Property Right**"). In the event that EXINI is enjoined, then EXINI shall, at its expense and sole option: (a) obtain for you the right to continue using such Software; (b) replace or modify the Software so that it does not infringe upon or misappropriate such Intellectual Property Right; or, (c) in the event that EXINI is unable or determines, in its reasonable judgment, that it is commercially unreasonable to do either of the aforementioned, EXINI shall promptly reimburse prepaid fees, if any, for which Software has not been provided.

**D. Procedures.** The conditions for the foregoing indemnities are that: (a) the indemnitee notifies the indemnitor in writing within thirty (30) days of the claim; (b) so long as the indemnitor promptly upon notice undertakes a competent defense with legal counsel reasonably approved by the indemnitee, the indemnitor shall have sole control of the defense and all related settlement negotiations provided that it shall not settle or compromise any matter in a manner that results in any obligation to, or burden on, the indemnitee other than the payment the indemnitor pays on the indemnitee's behalf, or that could cause the indemnitee any harm or subject it to any limitations, absent to indemnitee's consent; and (c) the indemnitee provides the indemnitor with the assistance, information and authority reasonably necessary to perform the above. Reasonable out-of-pocket expenses incurred by the indemnitee in providing such assistance will be reimbursed by the indemnitor. Indemnitee shall have the right to fully participate in the defense with counsel of its choice at its costs and if forced to take over the defense due to indemnitor's non-compliance with its obligations hereunder, to obtain recoupment of defense costs as they are incurred.

## **16.0 LIMITATIONS ON LIABILITY AND DAMAGES**

EXCEPT WITH RESPECT TO EACH PARTY'S BREACH OF ITS OBLIGATIONS UNDER SECTION 9 (CONFIDENTIALITY) AND YOUR BREACH OF SECTION 5 (INTELLECTUAL PROPERTY RIGHTS), EACH PARTY'S TOTAL LIABILITY FOR ANY OR ALL DAMAGES, LOSSES OR INJURIES UNDER THIS AGREEMENT, REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL IN NO EVENT EXCEED \$5,000 U.S. DOLLARS.

NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, FOR THE FOLLOWING TYPES OF FINANCIAL LOSS: DAMAGES TO BUSINESS REPUTATION, LOST BUSINESS OR GOODWILL, LOST EARNINGS OR LOST PROFITS, OR THE FOLLOWING TYPES OF ANTICIPATED OR INCIDENTAL LOSSES: LOSS OF ANTICIPATED SAVINGS, INCREASE IN BAD DEBT, FAILURE TO REDUCE BAD DEBT, IN EACH CASE WHETHER FORESEEABLE OR NOT AND HOWEVER

CAUSED, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE.

## 17.0 CHOICE OF LAW/FORUM SELECTION

This Agreement will be governed by the laws of the State of New York, without giving effect to its choice of law rules. The Parties agree to the exclusive jurisdiction and venue of the state and federal U.S. courts located within the Southern District of New York with respect to all matters arising out of this Agreement.

## 18.0 GENERAL PROVISIONS

**A. Notices.** All notices, requests, and other communications hereunder shall be in writing and shall be deemed delivered at the time of receipt if delivered by hand or communicated by electronic transmission, or, if mailed, sent via nationally recognized overnight courier service with delivery confirmed in writing. The Party agree that all notices, requests, and other communications provided electronically satisfy any legal requirement that such communications be in writing. Notices shall be sent to the postal addresses and/or email addresses set forth in the first paragraph of this Agreement.

**B. Complete Agreement.** This Agreement constitutes the entire and complete legal agreement between you and EXINI regarding its subject matter, and completely replaces any prior or contemporaneous agreements or understanding, written or oral, between you and EXINI regarding its subject matter.

**C. Amendment.** EXINI has the sole right to amend this Agreement upon thirty (30) days written notice to you. Any use of the Software after this thirty (30) days written notice shall constitute your acceptance of this Agreement as modified. If you do not agree to the Agreement as modified, do not continue to use the Software.

**D. Assignment.** This Agreement, and any rights or licenses granted hereunder, may not be transferred or assigned by either Party without the other Party's prior written consent. Notwithstanding the foregoing, EXINI may, without the prior written approval of you, assign its rights and obligations hereunder to an affiliated company, a parent company, subsidiary, or a successor-in-interest, or in connection with a merger, a sale of EXINI or all (or substantially all) of EXINI's assets, or similar reorganization. This Agreement will be binding upon and will inure to the benefit of the Party hereto and their respective heirs, representatives, successors and permitted assignees. Except for affiliates of EXINI, no persons will be third party beneficiaries to this Agreement.

**E. Severability.** In the event that any provision of this Agreement is for any reason held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, such invalidity, illegality, or unenforceability will not affect any other provision hereof, and this Agreement will be construed as if such invalid, illegal, or unenforceable provision had never been contained herein in regards to that particular jurisdiction.

**F. Waiver.** Either Party may waive compliance by the other Party with any covenants or conditions contained in this Agreement, but only by written agreement signed by the Party waiving such compliance. No such waiver, however, shall be deemed to waive any other circumstance or any other covenant or condition not expressly named in the written waiver.

**G. Captions and Headings.** All captions and headings in this Agreement are for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**H. Publicity.** Neither Party may make any written or oral representation about the other Party in connection with any press, advertisements or publicity or activities concerning the Party' relationship arising out of this Agreement, without the prior written consent of the other Party.

**I. Independent Contractors.** The Party are independent contractors and nothing herein shall be construed as creating an employment, agency, joint venture or partnership relationship between the Party and under no circumstances shall any of the employees of one Party be deemed to be employees of the other Party for any purpose. This Agreement shall not be construed as authority for either Party to act for the other in any agency or any other capacity or to make commitments of any kind for the account of or on behalf of the other Party.

**J. Excusable Delays.** Neither Party hereto shall be responsible for any failure to perform its obligations under this Agreement if such failure is caused by events or conditions beyond that Party's reasonable control including, without limitation, acts of God, any governmental body or failure of software or equipment of third parties.

**K. Survival.** The provisions of Sections 1, 3.A, 5, 8, 9, 10, 11, 12, 13, 14 and 15 shall survive termination of this Agreement for any reason.

INSTITUTION:

EXINI DIAGNOSTICS AB

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Aseem Anand, PhD  
VP Digital Technology

## Appendix 1

### Business Associate Agreement

This Business Associate Agreement (the “**BA Agreement**”) is entered into by and between you (“**Covered Entity**”) and EXINI Diagnostics AB (“**Business Associate**”) as of the Effective Date of the Agreement.

1) Scope.

A) This BA Agreement sets forth the terms and conditions that shall govern Covered Entity’s disclosure of Protected Health Information to Business Associate. This BA Agreement is not intended to amend, modify, or otherwise alter the rights, duties, and obligations of the Party under any other agreements between them. This BA Agreement also is not intended to grant any rights to any person or entity who is not a signatory to this BA Agreement. This BA Agreement only applies to the extent Business Associate is deemed a business associate to Covered Entity under the Privacy Rule or the Security Rule. Business Associate does not, by signing this BA Agreement, concede it is a business associate to Covered Entity under the Privacy Rule or the Security Rule.

B) Business Associate shall comply with the obligations imposed upon business associates under the Health Information Technology for Economic and Clinical Health Act, Division A of Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005 (the “**HITECH Act**”), and those obligations are incorporated by reference into this BA Agreement.

2) Definitions. Except as otherwise defined herein, any and all capitalized terms in this BA Agreement shall have the definitions set forth in the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as amended by the HITECH Act and may be further amended from time to time (the “**Privacy Rule**”) and the Security Standards for Health Insurance Reform at 45 C.F.R. Parts 160, 162 and 164, as amended by the HITECH Act and may be further amended from time to time (the “**Security Rule**”):

A) “**Breach**” means the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. “**Breach**” is subject to the limitations and exceptions set forth in 45 C.F.R. §164.402.

B) “**Business Associate**” has the meaning set forth above.

C) “**Compliance Date**” shall mean, in each case, the date by which compliance is required under the Privacy Rule and/or Security Rule, as amended by the HITECH Act; provided that, in any case for which the date is prior to the Effective Date of this BA Agreement, the Compliance Date shall mean the Effective Date.

D) “**Covered Entity**” has the meaning set forth above.

- E) “**Electronic Protected Health Information**” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- F) “**Individual**” means the person who is the subject of Protected Health Information.
- G) “**Privacy Rule**” has the meaning set forth above.
- H) “**Protected Health Information**” shall have the same meaning as the term “protected health information” in 45 C.F.R. §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- I) “**Required by Law**” has the same meaning as the term “required by law” in 45 C.F.R. §164.103 of the Privacy Rule
- J) “**Security Incident**” shall have the same meaning as the term “security incident” in 45 C.F.R. §164.304.
- K) “**Secretary**” means the Secretary of the Department of Health and Human Services or his or her designee.
- L) “**Security Rule**” has the meaning set forth above.
- M) “**Unsecured Protected Health Information**” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. §164.402.

### 3) Obligations and Activities of Business Associate

- A) Business Associate agrees to (1) not use or disclose Protected Health Information other than as permitted or required by this BA Agreement or as Required By Law, (2) use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement, and (3) to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BA Agreement of which it becomes aware.
- B) Consistent with the provisions of 45 C.F.R. §164.410, Business Associate agrees to notify Covered Entity without unreasonable delay and in no case later than 60 calendar days after the discovery of any Breach of Unsecured Protected Health Information. A Breach shall be treated as discovered by Business Associate as of the first day on which the Breach (i) is known to an employee, officer, or other agent of Business Associate, or (ii) by exercising reasonable diligence, would have been known to an employee, officer, or other agent of Business Associate. The notice shall include the identification of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during the Breach, as well as any other available information set forth in 45 C.F.R. §164.404(c).
- C) Business Associate agrees to require that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same

restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.

- D) Business Associate agrees to document any disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528 and Section 13405(c) of the HITECH Act, as applicable.
  - E) Within a timeframe to be mutually agreed upon, after it receives a written request from Covered Entity, Business Associate agrees to provide to Covered Entity or an Individual any information reasonably necessary to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528 and Section 13405(c) of the HITECH Act, as applicable.
  - F) With respect to Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, Business Associate agrees that it will:
    - 01) Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the information and comply with the Security Rule as of the Compliance Date;
    - 02) Require that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees in writing to implement reasonable and appropriate safeguards to protect the information and comply with the Security Rule as of the Compliance Date; and
    - 03) Report to the Covered Entity any Security Incident involving the information of which it becomes aware.
  - G) Business Associate will make its internal practices, books and records relating to its use and disclosure of Protected Health Information it creates or receives for or from Covered Entity available to the Secretary to determine Covered Entity's compliance with the Privacy Rule, the Security Rule.
  - H) To the extent not provided herein, the Business Associate shall comply with each of the applicable requirements imposed on the Business Associate by HITECH, as of the applicable Compliance Date. In the event there is additional guidance or regulations, or a change in law, which impacts the terms of this BA Agreement, Party shall negotiate in good faith any changes to this BA Agreement.
- 4) Permitted Uses and Disclosures by Business Associate
- A) Except as otherwise limited in this BA Agreement, Business Associate may use or disclose Protected Health Information, in compliance with each applicable requirement of 45 C.F.R. §164.504(e), to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in any agreements between Business Associate and Covered Entity under which Business Associate provides products or services to Covered Entity, provided that such use or disclosure would not violate the Privacy Rule or Security Rule if done by Covered Entity.
  - B) Except as otherwise limited in this BA Agreement, Business Associate may use or disclose Protected Health Information for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required



by Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- C) Business Associate may use or disclose Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).
- D) Business Associate may use or disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

## 5) Obligations of Covered Entity

- A) Covered Entity shall notify Business Associate in writing of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that the limitations may affect Business Associate's use or disclosure of Protected Health Information.
- B) Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that the changes or revocation may affect Business Associate's use or disclosure of Protected Health Information.
- C) Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that the restriction may affect Business Associate's use or disclosure of Protected Health Information.
- D) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule, the Security Rule, or the HITECH Act if done by Covered Entity, except to the extent that Business Associate is using or disclosing Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B), as allowed by Section 4(C) above, and/or to the extent that Business Associate is using or disclosing Protected Health Information for the proper management and administration of Business Associate, as allowed by Section 4(B) above.
- E) Covered Entity shall use its best efforts to minimize the disclosure of Protected Health Information to Business Associate where the disclosure of that information is not needed for Business Associate to provide products or services to Covered Entity.

## 6) Term and Termination.

- A) This BA Agreement shall be effective as of the date set forth above and it shall continue in effect until terminated as provided in Paragraphs 6.B or 6.C.
- B) This BA Agreement shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if

it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

- C) If Covered Entity has reason to believe that Business Associate has committed a material breach of this BA Agreement, Covered Entity shall notify Business Associate of the claimed breach and provide Business Associate with an opportunity to explain why no breach has occurred or to cure the breach. If Business Associate does not explain why no breach has occurred or cure the alleged breach within a period of time to be mutually agreed upon, Covered Entity may terminate this BA Agreement by written notice to Business Associate.
- D) Unless it is not feasible to do so, upon termination of this BA Agreement for any reason, Business Associate shall return to Covered Entity or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. If Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall notify Covered Entity of the conditions that make return or destruction infeasible and shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information. The rights and obligations of Business Associate under this paragraph shall survive the termination of this BA Agreement.

## 7) Miscellaneous

- A) Regulatory References. A reference in this BA Agreement to a section in the Privacy Rule, the Security Rule, or the HITECH Act means the section as in effect or as amended.
- B) Amendment. Covered Entity and Business Associate agree to take such action as is necessary to amend this BA Agreement from time to time as necessary for the Party to comply with the requirements of the Privacy Rule, Security Rule, and HITECH Act.
- C) Section Headings. The Section headings used in this BA Agreement are for purposes of convenience or reference only. They shall not be used to explain, limit, or extend the meaning of any part of this BA Agreement.
- D) Severability. In the event that any one or more of the provisions contained in this BA Agreement shall for any reason be held by a court of competent jurisdiction to be unenforceable in any respect, such holding shall not affect any other provisions of this BA Agreement, and this BA Agreement shall then be construed as if such unenforceable provisions are not a part hereof.

