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Quote # 110803.K.19
Offer Expires: 10/15/2011

West Chester University of PA
750 South Church Street
Center for Microanalysis and Imaging, Research and Training
Schmucker Science Center South
West Chester, PA 19383

| Model | Serial # | Performance Period | Price |
|-----------------------------|---------------------------|--------------------------|------------|
| INCA mics/x-stream//SEM TV3 | 1780//A1780-5350-TV3-1322 | 10/16/2011 to 10/15/2012 | \$9,750.00 |

NanoAnalysis

1. Scope of Services - COMPREHENSIVE - On-Site Maintenance Agreement with TVA Detector Rapid Replacement (DRR)

- A. This Maintenance Agreement covers the entire Oxford Instruments product(s) listed above, as provided or modified by Oxford Instruments, unless exceptions are noted elsewhere in this document. Priority telephone support, labor, Genuine Spare Parts and Travel Related Expenses shall be provided at the expense of Oxford Instruments for the specified equipment during the performance period subject to the terms and conditions set forth in this document.
- B. TVA detectors shall be replaced when diagnosed as not performing properly by an Oxford Instruments service engineer. Replacement detectors shall be shipped within one business day of diagnosis for next day delivery.
- C. One Preventive Maintenance (PM) and calibration to factory specification shall be performed during the final six months of the term of this agreement. PM and calibration may be performed earlier in conjunction with a maintenance call. This periodic maintenance is intended to supplement routine CUSTOMER performed maintenance, install software modifications, verify system performance and reduce unplanned interruptions to instrument availability.
- D. Oxford Instruments shall provide software updates, defined as modifications that provide bug fixes and/or safety related improvements at no charge, for the PRODUCTS listed above or on the attached Schedule(s) during the specified term. Upgrades, defined as add-on PRODUCTS or new PRODUCTS or the addition of features and functions may be optionally available at additional cost.
- E. Equipment on this agreement is eligible for a 25% discount on labor for selected additional services. Eligible services include, but are not limited, to: upgrades, training and relocation. Separate agreements shall determine pricing, terms and conditions that apply to any such additional services.

This agreement, Articles 1 through 16, dated, Wednesday, August 03, 2011 and any other Agreements, addenda, exhibits or other documents expressly made part of or incorporated into the Agreement, ~~constitute the complete and exclusive statement of the Agreement~~ between the parties with respect to the maintenance of equipment listed above and supersedes and merges all prior and contemporaneous proposals, statements, representations, understandings or agreements, written or oral, expressed or implied and CUSTOMER agrees to be legally bound by the same. CUSTOMER acknowledges that it did not enter into this Agreement in reliance upon any representation by Oxford Instruments or understanding by CUSTOMER that is not set forth here in. ~~No acceptance shall be effective and no offer shall be deemed accepted if it varies the Terms and Conditions of this agreement or if it proposes additional terms or conditions to the agreement. Any such proposals shall be deemed rejected unless expressly amended to the Agreement.~~ The Agreement may be amended only by a written instrument executed by both parties that specifically purports to do so.

Accepted by: West Chester University of PA

Signature: _____

Date/Title: _____

Name: _____

Offered by: Oxford Instruments America, Inc.

Signature: _____

8/3/2011 / Service Sales Specialist

Kristen Davis

West Chester University
Attachment to SP 4000026726



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2. DEFINITIONS

- A. "Agreement" means this Maintenance Agreement between CUSTOMER and OXFORD INSTRUMENTS that incorporates the attached Schedule(s) and all other documents expressly made a part thereof.
- B. "Product" means hardware, including components, sub-assemblies, accessories, spare parts, service and maintenance offerings, and software as provided by OXFORD INSTRUMENTS.
- C. "System" or "Tool" or "Equipment" means a specific configuration of hardware/software as sold by OXFORD INSTRUMENTS.
- D. "OXFORD INSTRUMENTS" or "WE" or "US" mean Oxford Instruments America, Inc. or any of its holdings.
- E. "CUSTOMER" or "YOU" or "USER" means the Individual, Partnership or Corporation listed above or its successors, assigns, nominees, consultants, agents, employees, servants, sub contractors or representatives.

3. SCOPE OF SERVICES - GENERAL:

- A. In the event of failure, the CUSTOMER shall notify OXFORD INSTRUMENTS as soon as possible by telephone and assist US in determining the cause of failure. OXFORD INSTRUMENTS shall provide CUSTOMER with access to a customer support hot line at designated OXFORD INSTRUMENTS Customer Service Offices.
- B. OXFORD INSTRUMENTS shall provide telephone response within one business day. OXFORD INSTRUMENTS may elect to send a replacement part to resolve a problem; the CUSTOMER shall replace the defective part. If telephone assistance and/or parts exchange do not resolve the problem OXFORD INSTRUMENTS shall resolve the problem per section One (1) of this agreement. Parts or components shall be replaced at the discretion of OXFORD INSTRUMENTS.
- C. Replacement parts shall be of equivalent or superior performance to factory specifications at the time the equipment was originally purchased. OXFORD INSTRUMENTS reserves the right to use reconditioned parts. All removed parts shall become the property of OXFORD INSTRUMENTS. All installed parts shall become the property of the CUSTOMER. OXFORD INSTRUMENTS reserves the right to invoice and seek payment for the cost of any exchanged parts not returned within fifteen (15) calendar days of shipment.
- D. CUSTOMER shall allow OXFORD INSTRUMENTS to install mandatory engineering modifications deemed necessary by both OXFORD INSTRUMENTS and CUSTOMER under mutually agreed conditions.
- E. This AGREEMENT is not a guarantee against obsolescence. Obsolete is defined as no longer being manufactured and not currently serviced by anyone trained in the repair of such items. Obsolete systems shall be maintained and or repaired on a best effort basis utilizing available parts and skills. This AGREEMENT is not a guarantee that the performance of any system will be uninterrupted or error free.

4. ELIGIBLE SYSTEMS:

- A. Instrument must be fully installed and must be accepted by CUSTOMER for performance and adherence to specification.
- B. Any OXFORD INSTRUMENTS Systems listed on OXFORD INSTRUMENTS' then current Support Agreements Pricing Schedule that are currently covered under and OXFORD INSTRUMENTS warranty or OXFORD INSTRUMENTS maintenance agreement.
- C. Any Systems that are not currently covered by an OXFORD INSTRUMENTS warranty or OXFORD INSTRUMENTS maintenance agreement that passes a pre-service inspection. If a pre-service inspection is required, CUSTOMER shall be invoiced for such inspection and any refurbishment changes necessary to permit the Systems to be covered under this Agreement.
- D. Systems not supplied by OXFORD INSTRUMENTS and listed on the face of this agreement, subject to 4.C above..

5. CHANGES IN SYSTEMS:

- A. OXFORD INSTRUMENTS supplied components purchased by CUSTOMER and incorporated in covered Products, shall be automatically added to this Agreement and may result in additional charges.

6. CHARGES:

- A. Charges shall be as noted on the attached Schedule(s) in Units States Dollars. Charges are a function of the type or response time and level or coverage that the CUSTOMER chooses. The Total Charge is the sum total of all maintenance charges for services selected, including all discounts and sur charges. The Total Charge shall be invoiced, NET 30, annually in advance of the specified Performance Period. CUSTOMER shall pay interest on amounts not paid when due at one percent (1%) per month. ~~CUSTOMER shall pay all costs incurred by OXFORD INSTRUMENTS in collecting overdue accounts including reasonable attorney's fees.~~ OXFORD INSTRUMENTS' performance under this agreement shall be suspended



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when any invoice becomes 60 days past due and shall be resumed when the account becomes current

- B. Monthly, quarterly or semi annual invoices are optionally available at a fee of Seventy-Five Dollars (\$75.00) per invoice.
- C. Charges are exclusive of all taxes and/or duties and/or tariffs. Unless CUSTOMER provides OXFORD INSTRUMENTS with appropriate tax exemption certificates, such costs shall be billed to CUSTOMER as a separate line item on each invoice.
- D. Charges for labor or materials for any service that is not covered under this Agreement shall be invoiced at OXFORD INSTRUMENTS' then current non-contract rates less any applicable discounts as noted on Page 1.
- E. A fee of \$25.00 will be added to the Total Charge for each CUSTOMER check returned for any reason.

7. TERM OF COVERAGE

- A. The Performance Period of this Agreement shall be designated as noted on Page 1 of this agreement. Except as provided herein this agreement is non-cancelable with locked-in rates during each specified Performance Period.
- B. This Agreement shall become effective as described above for the initial Performance Period. Thereafter, this Agreement shall be renewed for an additional term, unless terminated by either party upon a minimum of sixty (60) days written notice, prior to the schedule renewal date listed on the attached Schedule(s). At the time of any such automatic renewal, the price shall be adjusted to reflect the then current list price for each service. WE shall notify YOU ninety (90) days prior to the renewal date of any price changes greater than five percent (5%) per year.
- C. The Performance Period of maintenance coverage for additional purchased Systems that are attached to the same primary system as the Systems covered by this Agreement, shall be co-terminus with the Performance Period of coverage for the related group of Systems. Maintenance coverage shall be required for all such additional purchase Systems.
- D. OXFORD INSTRUMENTS reserves the right to discontinue maintenance on any Systems covered by this Agreement upon sixty (60) days prior written notice to CUSTOMER. In that event, CUSTOMER may at it's option, terminate this Agreement for all the remaining Systems covered under this Agreement by providing OXFORD INSTRUMENTS written notice within thirty (30) days of receipt of OXFORD INSTRUMENTS' notice of such discontinuance, or continue with the Agreement as altered.

8. INSTALLATION:

- A. When Systems under this Agreement are installed by OXFORD INSTRUMENTS, CUSTOMER shall prepare and maintain the Installation Site in conformance with the specifications provided by OXFORD INSTRUMENTS.

9. MOVEMENT OF INSTRUMENTS (Except hand held instruments):

- A. The Charges specified in this Agreement apply only to maintenance service regarding Systems at the location specified in this Agreement.
- B. Systems moved to a new location that is serviced by OXFORD INSTRUMENTS are eligible for continued maintenance service at the rates and terms then in effect for the new location. OXFORD INSTRUMENTS reserves the right to amend this Agreement accordingly. If OXFORD INSTRUMENTS does not remove and reinstall the Systems, a pre-service inspection (as described in Section 4) shall be required, in order to continue maintenance under this Agreement.
- C. OXFORD INSTRUMENTS will, at CUSTOMER's request, remove and reinstall such System(s) pursuant to the mutually agreed upon terms and conditions of a separate Agreement. If OXFORD INSTRUMENTS completes the move and installation, a pre-service inspection and rectification, as described in Section 4, is not required.
- D. CUSTOMER may, at its own risk, remove and reinstall system up on thirty (30) days prior written notice to OXFORD INSTRUMENTS specifying the new location for Systems.
- E. Upon relocation of any Systems(s) by CUSTOMER, CUSTOMER shall grant OXFORD INSTRUMENTS access to inspect such Systems(s). If OXFORD INSTRUMENTS personnel determine that the Systems are not in good operating condition, CUSTOMER shall be charged separately at the then current rates and terms for all labor, materials and adjustments required to restore the Systems good operating condition. If OXFORD INSTRUMENTS reasonably believes that the Systems(s) cannot be put into good operating condition, OXFORD INSTRUMENTS shall have the right to terminate this Agreement regardless of any prior OXFORD INSTRUMENTS approval of Systems(s) movement.

10. ACCESS:

- A. Hand Held Systems - serviced at OXFORD INSTRUMENTS' depot only. Failure to ship to OXFORD INSTRUMENTS depot as mutually agreed may result in service delays.
- B. Non-Hand Held Systems - CUSTOMER shall, at a mutually agreed upon time, provide access to the System for requested maintenance. Changes in



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the mutually agreed upon time must be made no less than 24 hours in advance of the schedule time. OXFORD INSTRUMENTS engineer(s) denied access to a facility or Systems, by CUSTOMER, that has been mutually scheduled, and not cancelled 24 hours in advanced shall be billed at standard rates for time and expenses..

- C. CUSTOMER shall provide full and free access to and use of Information, facilities, machines, attachments, features or other equipment determined necessary by OXFORD INSTRUMENTS, to provide maintenance services for the Systems covered by this Agreement.
- D. Pricing of this Agreement is based on timely access to Equipment to be serviced. This agreement includes up to three (3) hours per year for CUSTOMER required safety training or security screening at Equipment location in conjunction with a service visit. Additional time or travel or living expenses are excluded and subject to Time and Materials charges then in effect.

11. SERVICE LIMITATIONS / EXCLUSIONS:

OXFORD INSTRUMENTS' obligation to provide maintenance services under this Agreement expressly exclude:

- A. Electric work external to the SYSTEM.
- B. Changes or alterations to the SYSTEM specification, made or requested, unless performed by OXFORD INSTRUMENTS.
- C. Loaners, add-on SYSTEMS, replacement by new PRODUCTS or upgrades, unless explicitly included elsewhere in this agreement.
- D. Components supplied by others such as, but not limited to, accessories, attachments, software, networks, computers, virus infections, security attacks, computers, computer parts and sub-assemblies, except as specifically stated herein to the contrary.
- E. Provision of supplies, accessories, (e.g. sample cups, cover plates, platents), removable media (e.g. disks, tapes), missing parts, expendable items (e.g. printer paper, ribbons, etc.), attachments or other devices, shipping crates or packing materials.
- F. Remedial maintenance resulting from causes other than ordinary use by CUSTOMER such as, but not limited to, accidents, vandalism, war, fire, civil disturbances, earthquakes, explosions, storms, acts of God, USER negligence or misuse, improper USER operation or programming, USER error, backup or restore of operating system, software or data, moving/shipping damage, unsuitable environmental conditions, failure or fluctuation of electrical power or air conditioning or humidity control, failure resulting from abnormal physical or electrical stress.
- G. Restoring the Systems to good working condition as a result of maintenance, repairs, additions, deletions or modification to hardware or software, performed or attempted by persons other than OXFORD INSTRUMENTS representative, unless authorized by US.
- H. Restoring the Systems to good working condition as a result of contamination by radiological, chemical, biological or any other means. Contaminated parts shall become the property of the CUSTOMER and replacements will be invoiced to the CUSTOMER at the then current list prices.
- I. Restoring the Systems to good working condition as a result of a casualty loss.
- J. Systems(s) shipped to the US unless previously authorized via an OXFORD INSTRUMENTS Return Materials Authorization (RMA).
- K. Painting or refurbishing the Systems or supplying materials for that purpose.
- L. Any services, performance, parts or systems not explicitly included in this agreement and its attachments.
- M. Delays in OXFORD INSTRUMENTS' performance of its obligations when the delay was due to occurrences such as but not limited to floods, strikes or other labor disturbances, fires, earthquakes, explosions, storms or acts of God, accidents, wars, civil disturbances, delays of carriers, inability to obtain electricity or any other type of energy, raw materials, labor equipment or transportation, restraints of government, machinery or equipment breakdown, or any other causes beyond the reasonable control of OXFORD INSTRUMENTS that would make performance by OXFORD INSTRUMENTS impossible. In the event of an inability to perform maintenance as a result of a force majeure event, OXFORD INSTRUMENTS agrees to provide maintenance in a manner consistent with its contractual obligations and at a level not less than the proportion that the volume of maintenance business on behalf of CUSTOMER represents of the total maintenance business of OXFORD INSTRUMENTS.

12. DISCLAIMER OF WARRANTY:

OXFORD INSTRUMENTS MAKES NO WARRANTY OF ANY KIND, WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PARTS OR SERVICE PROVIDED IN CONNECTION WITH THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. ALL PARTS AND SERVICE BEING PROVIDED "AS IS" EXCEPT THAT OXFORD INSTRUMENTS WARRANTS THAT ALL MAINTENANCE ACTIVITIES SHALL BE PERFORMED IN ACCORDANCE WITH OXFORD INSTRUMENTS' PUBLISHED POLICIES AND PROCEDURES.

13. LIMITATION OF LIABILITY:

~~IN NO EVENT SHALL OXFORD INSTRUMENTS BE LIABLE FOR ANY DAMAGES CAUSED BY CUSTOMER'S FAILURE TO PERFORM CUSTOMER'S RESPONSIBILITIES, FOR LOSS OF USE, DATA, INFORMATION, PROFITS OR FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR WITH THE USE OR PERFORMANCE OF ANY SYSTEMS, EVEN IF OXFORD INSTRUMENTS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGES, OR FOR ANY CLAIM AGAINST CUSTOMER BY ANY OTHER PARTY.~~

14. DEFAULT:

- A. Any of the following shall constitute an act of default hereunder; (i) the failure of either party to perform any material term, condition or covenant of this Agreement which failure has not been corrected within thirty (30) days of the date of written notice of such failure by the other party; or (ii) CUSTOMER is not paying its debts as they become due. CUSTOMER shall have a ten (10) day grace period to pay amounts due to OXFORD INSTRUMENTS.
- B. In the event an act of default shall occur, the party not in default shall have the right to, and may elect any or all of the following remedies which shall be cumulative and not exclusive: (i) terminate this Agreement in its entirety; and, (ii) if OXFORD INSTRUMENTS is not the party in default, the OXFORD INSTRUMENTS may declare, at its option, all charges incurred but unpaid under this Agreement to be due and payable; and, (iii) pursue each and every other remedy available at law and equity.

15. NOTICE:

ALL WRITTEN NOTICES REQUIRED TO BE GIVEN BY EITHER PARTY TO THE OTHER UNDER THIS AGREEMENT SHALL BE SENT TO OXFORD INSTRUMENTS AT 300 BAKER AVENUE, SUITE 150, CONCORD, MA 01742, ATTENTION NORTH AMERICAN SERVICE, SERVICE AGREEMENT ADMINISTRATOR, AND TO CUSTOMER AT ITS ADDRESS AS NOTED ON THE FRONT OF THIS AGREEMENT. CUSTOMER SHALL NOTIFY OXFORD INSTRUMENTS PROMPTLY OF ANY CHANGE IN CUSTOMER'S DESIGNATED CONTACT PERSON OR ADDRESS. NOTICES SHALL BE DEEMED GIVEN ON THE DATE MAILED TO THE OTHER PARTY BY CERTIFIED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED.

16. GENERAL:

- A. Neither party shall delegate any duties nor assign any rights or claims under these terms and conditions without the other party's prior written consent and any such attempted delegation or assignment shall be void.
- B. This Agreement shall be binding upon the successors and assigns of both CUSTOMER and OXFORD INSTRUMENTS.
- C. Failure by either party to enforce any of the terms or conditions hereunder or the delay in exercising any of its remedies shall not constitute as waiver of that of any other term, condition or remedy contained herein.
- D. This Agreement shall be governed by and interpreted, construed and enforced in accordance with the laws of the Commonwealth of ~~Massachusetts~~ **Pennsylvania**

Customer acknowledges all terms and conditions sections 1-16 and notes any attachments hereunder. All exceptions to the above terms and conditions have been provided in an attachment and noted below.

Customer Initials _____ Date _____ Attachments _____

Liability. Neither of the parties shall assume any liabilities to each other. As to liability to each other or death to persons, or damages to property, the parties do not waive any defense as a result of entering into this contract. This provision shall not be construed to limit the Commonwealth's rights, claims or defenses which arise as a matter of law pursuant to any provisions of this contract. This provision shall not be construed to limit the sovereign immunity of the Commonwealth or of the State System of Higher Education or the University.