



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Contract

Order Date: 10-05-2021

CORRECT ORDER NUMBER MUST APPEAR
ON ALL PACKAGES, INVOICES, AND
SHIPPING PAPERS. QUESTIONS
CONCERNING THIS ORDER SHOULD BE
DIRECTED TO THE DEPARTMENT
CONTACT.

Order Number:	CCT 1400 1400 AGR2200000003 1	Procurement Folder:	881938
Document Name:	Preventative Maintenance	Reason for Modification:	
Document Description:	Preventative Maintenance		
Procurement Type:	Central Contract - Fixed Amt		
Buyer Name:	Jessica S Chambers		
Telephone:	(304) 558-0246		
Email:	jessica.s.chambers@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2021-10-05
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2022-10-04

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VS0000014820 DATASCOPE CORP 45 BARBOUR POND DR WAYNE NJ 07470 US Vendor Contact Phone: 800-950-9912 Extension: Discount Details: <table><thead><tr><th></th><th>Discount Allowed</th><th>Discount Percentage</th><th>Discount Days</th></tr></thead><tbody><tr><td>#1</td><td>No</td><td>0.0000</td><td>0</td></tr><tr><td>#2</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#3</td><td>Not Entered</td><td></td><td></td></tr><tr><td>#4</td><td>Not Entered</td><td></td><td></td></tr></tbody></table>		Discount Allowed	Discount Percentage	Discount Days	#1	No	0.0000	0	#2	Not Entered			#3	Not Entered			#4	Not Entered			Requestor Name: Renee See Requestor Phone: (304) 538-2397 Requestor Email: rsee@ag.state.wv.us 22 FILE LOCATION _____
	Discount Allowed	Discount Percentage	Discount Days																		
#1	No	0.0000	0																		
#2	Not Entered																				
#3	Not Entered																				
#4	Not Entered																				

INVOICE TO	SHIP TO
PROCUREMENT OFFICER 304-558-2221 AGRICULTURE DEPARTMENT OF ADMINISTRATIVE SERVICES 1900 KANAWHA BLVD E CHARLESTON WV 25305-0173 US	AUTHORIZED RECEIVER 304-538-2397 AGRICULTURE DEPARTMENT OF MOOREFIELD FIELD OFFICE 60B INDUSTRIAL PARK RD MOOREFIELD WV 26836-0302 US

10-8-21
JSA

Purchasing Division's File Copy

Total Order Amount: \$4,095.00

ENTERED

PURCHASING DIVISION AUTHORIZATION

DATE: 10/18/2021
ELECTRONIC SIGNATURE ON FILE

ATTORNEY GENERAL APPROVAL AS TO FORM

DATE: 10/18/2021
ELECTRONIC SIGNATURE ON FILE

ENCUMBRANCE CERTIFICATION

DATE: 10-19-2021
ELECTRONIC SIGNATURE ON FILE

Extended Description:

Preventative Maintenance

The Vendor: Datascope Corporation of Wayne NJ agrees to enter into contract with the Agency, The West Virginia Department of Agriculture to provide a contract for Preventative Maintenance & Support per the Terms and Conditions and the Vendor's submitted response, dated: 5/27/2021, all incorporated herein by reference and made apart of herein as attached.

Effective Dates: 10/05/2021 - 10/04/2022

3 Renewals Remaining

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	81101706	0.00000		0.000000	\$4,095.00
Service From	Service To	Manufacturer		Model No	
2021-10-05	2022-10-04				

Commodity Line Description: Preventative Maintenance**Extended Description:**

Pricing must be provided per the attached Exhibit A Pricing Page.

GENERAL TERMS AND CONDITIONS:

1. CONTRACTUAL AGREEMENT: Issuance of an Award Document signed by the Purchasing Division Director, or his designee, and approved as to form by the Attorney General's office constitutes acceptance by the State of this Contract made by and between the State of West Virginia and the Vendor. Vendor's signature on its bid, or on the Contract if the Contract is not the result of a bid solicitation, signifies Vendor's agreement to be bound by and accept the terms and conditions contained in this Contract.

2. DEFINITIONS: As used in this Solicitation/Contract, the following terms shall have the meanings attributed to them below. Additional definitions may be found in the specifications included with this Solicitation/Contract.

2.1. "Agency" or "Agencies" means the agency, board, commission, or other entity of the State of West Virginia that is identified on the first page of the Solicitation or any other public entity seeking to procure goods or services under this Contract.

2.2. "Bid" or "Proposal" means the vendors submitted response to this solicitation.

2.3. "Contract" means the binding agreement that is entered into between the State and the Vendor to provide the goods or services requested in the Solicitation.

2.4. "Director" means the Director of the West Virginia Department of Administration, Purchasing Division.

2.5. "Purchasing Division" means the West Virginia Department of Administration, Purchasing Division.

2.6. "Award Document" means the document signed by the Agency and the Purchasing Division, and approved as to form by the Attorney General, that identifies the Vendor as the contract holder.

2.7. "Solicitation" means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.

2.8. "State" means the State of West Virginia and/or any of its agencies, commissions, boards, etc. as context requires.

2.9. "Vendor" or "Vendors" means any entity submitting a bid in response to the Solicitation, the entity that has been selected as the lowest responsible bidder, or the entity that has been awarded the Contract as context requires.

3. CONTRACT TERM; RENEWAL; EXTENSION: The term of this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below:

☒ **Term Contract**

Initial Contract Term: This Contract becomes effective on 10/05/2021 and the initial contract term extends until 10/04/2022.

Renewal Term: This Contract may be renewed upon the mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any request for renewal should be delivered to the Agency and then submitted to the Purchasing Division thirty (30) days prior to the expiration date of the initial contract term or appropriate renewal term. A Contract renewal shall be in accordance with the terms and conditions of the original contract. Unless otherwise specified below, renewal of this Contract is limited to (3) Three successive one (1) year periods or multiple renewal periods of less than one year, provided that the multiple renewal periods do not exceed the total number of months available in all renewal years combined. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

☐ **Alternate Renewal Term** – This contract may be renewed for _____ successive _____ year periods or shorter periods provided that they do not exceed the total number of months contained in all available renewals. Automatic renewal of this Contract is prohibited. Renewals must be approved by the Vendor, Agency, Purchasing Division and Attorney General's office (Attorney General approval is as to form only)

Delivery Order Limitations: In the event that this contract permits delivery orders, a delivery order may only be issued during the time this Contract is in effect. Any delivery order issued within one year of the expiration of this Contract shall be effective for one year from the date the delivery order is issued. No delivery order may be extended beyond one year after this Contract has expired.

☐ **Fixed Period Contract:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and must be completed within _____ days.

☐ **Fixed Period Contract with Renewals:** This Contract becomes effective upon Vendor's receipt of the notice to proceed and part of the Contract more fully described in the attached specifications must be completed within _____ days. Upon completion of the work covered by the preceding sentence, the vendor agrees that maintenance, monitoring, or warranty services will be provided for _____ year(s) thereafter.

☐ **One Time Purchase:** The term of this Contract shall run from the issuance of the Award Document until all of the goods contracted for have been delivered, but in no event will this Contract extend for more than one fiscal year.

☐ **Other:** See attached _____
Revised 04/21/2021

4. AUTHORITY TO PROCEED: Vendor is authorized to begin performance of this contract on the date of encumbrance listed on the front page of the Award Document unless either the box for "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked in Section 3 above. If either "Fixed Period Contract" or "Fixed Period Contract with Renewals" has been checked, Vendor must not begin work until it receives a separate notice to proceed from the State. The notice to proceed will then be incorporated into the Contract via change order to memorialize the official date that work commenced.

5. QUANTITIES: The quantities required under this Contract shall be determined in accordance with the category that has been identified as applicable to this Contract below.

☐ **Open End Contract:** Quantities listed in this Solicitation/Award Document are approximations only, based on estimates supplied by the Agency. It is understood and agreed that the Contract shall cover the quantities actually ordered for delivery during the term of the Contract, whether more or less than the quantities shown.

☐ **Service:** The scope of the service to be provided will be more clearly defined in the specifications included herewith.

☒ **Combined Service and Goods:** The scope of the service and deliverable goods to be provided will be more clearly defined in the specifications included herewith.

☐ **One Time Purchase:** This Contract is for the purchase of a set quantity of goods that are identified in the specifications included herewith. Once those items have been delivered, no additional goods may be procured under this Contract without an appropriate change order approved by the Vendor, Agency, Purchasing Division, and Attorney General's office.

6. EMERGENCY PURCHASES: The Purchasing Division Director may authorize the Agency to purchase goods or services in the open market that Vendor would otherwise provide under this Contract if those goods or services are for immediate or expedited delivery in an emergency. Emergencies shall include, but are not limited to, delays in transportation or an unanticipated increase in the volume of work. An emergency purchase in the open market, approved by the Purchasing Division Director, shall not constitute a breach of this Contract and shall not entitle the Vendor to any form of compensation or damages. This provision does not excuse the State from fulfilling its obligations under a One Time Purchase contract.

7. REQUIRED DOCUMENTS: All of the items checked below must be provided to the Purchasing Division by the Vendor as specified below.

☐ **BID BOND (Construction Only):** Pursuant to the requirements contained in W. Va. Code § 5-22-1(c), All Vendors submitting a bid on a construction project shall furnish a valid bid bond in the amount of five percent (5%) of the total amount of the bid protecting the State of West Virginia. The bid bond must be submitted with the bid.

☐ **PERFORMANCE BOND:** The apparent successful Vendor shall provide a performance bond in the amount of 100% of the contract. The performance bond must be received by the Purchasing Division prior to Contract award.

☐ **LABOR/MATERIAL PAYMENT BOND:** The apparent successful Vendor shall provide a labor/material payment bond in the amount of 100% of the Contract value. The labor/material payment bond must be delivered to the Purchasing Division prior to Contract award.

In lieu of the Bid Bond, Performance Bond, and Labor/Material Payment Bond, the Vendor may provide certified checks, cashier's checks, or irrevocable letters of credit. Any certified check, cashier's check, or irrevocable letter of credit provided in lieu of a bond must be of the same amount and delivered on the same schedule as the bond it replaces. A letter of credit submitted in lieu of a performance and labor/material payment bond will only be allowed for projects under \$100,000. Personal or business checks are not acceptable. Notwithstanding the foregoing, West Virginia Code § 5-22-1 (d) mandates that a vendor provide a performance and labor/material payment bond for construction projects. Accordingly, substitutions for the performance and labor/material payment bonds for construction projects is not permitted.

☐ **MAINTENANCE BOND:** The apparent successful Vendor shall provide a two (2) year maintenance bond covering the roofing system. The maintenance bond must be issued and delivered to the Purchasing Division prior to Contract award.

☐ **LICENSE(S) / CERTIFICATIONS / PERMITS:** In addition to anything required under the Section of the General Terms and Conditions entitled Licensing, the apparent successful Vendor shall furnish proof of the following licenses, certifications, and/or permits upon request and in a form acceptable to the State. The request may be prior to or after contract award at the State's sole discretion.

The apparent successful Vendor shall also furnish proof of any applicable additional licenses or certifications contained in the specifications regardless of whether or not that requirement is listed above.

8. INSURANCE: The apparent successful Vendor shall furnish proof of the insurance identified by a checkmark below and must include the State as an additional insured on each policy prior to Contract award. The insurance coverages identified below must be maintained throughout the life of this contract. Thirty (30) days prior to the expiration of the insurance policies, Vendor shall provide the Agency with proof that the insurance mandated herein has been continued. Vendor must also provide Agency with immediate notice of any changes in its insurance policies, including but not limited to, policy cancelation, policy reduction, or change in insurers. The apparent successful Vendor shall also furnish proof of any additional insurance requirements contained in the specifications prior to Contract award regardless of whether or not that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: 100,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: 100,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: N/A per occurrence. Notwithstanding the forgoing, Vendor's are not required to list the State as an additional insured for this type of policy.

☐ **Commercial Crime and Third Party Fidelity Insurance** in an amount of: N/A per occurrence.

☐ **Cyber Liability Insurance** in an amount of: N/A per occurrence.

☐ **Builders Risk Insurance** in an amount equal to 100% of the amount of the Contract.

☐ **Pollution Insurance** in an amount of: N/A per occurrence.

☐ **Aircraft Liability** in an amount of: N/A per occurrence.

Notwithstanding anything contained in this section to the contrary, the Director of the Purchasing Division reserves the right to waive the requirement that the State be named as an additional insured on one or more of the Vendor's insurance policies if the Director finds that doing so is in the State's best interest.

9. WORKERS' COMPENSATION INSURANCE: Vendor shall comply with laws relating to workers compensation, shall maintain workers' compensation insurance when required, and shall furnish proof of workers' compensation insurance upon request.

10. [Reserved]

11. LIQUIDATED DAMAGES: This clause shall in no way be considered exclusive and shall not limit the State or Agency's right to pursue any other available remedy.

☐ _____

12. ACCEPTANCE: Vendor's signature on its bid, or on the certification and signature page, constitutes an offer to the State that cannot be unilaterally withdrawn, signifies that the product or service proposed by vendor meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise indicated, and signifies acceptance of the terms and conditions contained in the Solicitation unless otherwise indicated.

13. PRICING: The pricing set forth herein is firm for the life of the Contract, unless specified elsewhere within this Solicitation/Contract by the State. A Vendor's inclusion of price adjustment provisions in its bid, without an express authorization from the State in the Solicitation to do so, may result in bid disqualification. Notwithstanding the foregoing, Vendor must extend any publicly advertised sale price to the State and invoice at the lower of the contract price or the publicly advertised sale price.

14. PAYMENT IN ARREARS: Payments for goods/services will be made in arrears only upon receipt of a proper invoice, detailing the goods/services provided or receipt of the goods/services, whichever is later. Notwithstanding the foregoing, payments for software maintenance, licenses, or subscriptions may be paid annually in advance.

15. PAYMENT METHODS: Vendor must accept payment by electronic funds transfer.

16. TAXES: The Vendor shall pay any applicable sales, use, personal property or any other taxes arising out of this Contract and the transactions contemplated thereby. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.

17. ADDITIONAL FEES: Vendor is not permitted to charge additional fees or assess additional charges that were not either expressly provided for in the solicitation published by the State of West Virginia, included in the Contract, or included in the unit price or lump sum bid amount that Vendor is required by the solicitation to provide. Including such fees or charges as notes to the solicitation may result in rejection of vendor's bid. Requesting such fees or charges be paid after the contract has been awarded may result in cancellation of the contract.

18. FUNDING: This Contract shall continue for the term stated herein, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise made available, this Contract becomes void and of no effect beginning on July 1 of the fiscal year for which funding has not been appropriated or otherwise made available. If that occurs, the State may notify the Vendor that an alternative source of funding has been obtained and thereby avoid the automatic termination. Non-appropriation or non-funding shall not be considered an event of default.

19. CANCELLATION: The Purchasing Division Director reserves the right to cancel this Contract immediately upon written notice to the vendor if the materials or workmanship supplied do not conform to the specifications contained in the Contract. The Purchasing Division Director may also cancel any purchase or Contract upon 30 days written notice to the Vendor in accordance with West Virginia Code of State Rules § 148-1-5.2.b.

20. TIME: Time is of the essence with regard to all matters of time and performance in this Contract.

21. APPLICABLE LAW: This Contract is governed by and interpreted under West Virginia law without giving effect to its choice of law principles. Any information provided in specification manuals, or any other source, verbal or written, which contradicts or violates the West Virginia Constitution, West Virginia Code, or West Virginia Code of State Rules is void and of no effect.

22. COMPLIANCE WITH LAWS: Vendor shall comply with all applicable federal and state laws, regulations and ordinances. By submitting a bid, Vendor acknowledges that it has reviewed, understands, and will comply with all applicable laws, regulations, and ordinances.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to comply with all applicable laws, regulations, and ordinances. Notification under this provision must occur prior to the performance of any work under the contract by the

subcontractor.

- 23. ARBITRATION:** Any references made to arbitration contained in this Contract, Vendor's bid, or in any American Institute of Architects documents pertaining to this Contract are hereby deleted, void, and of no effect.
- 24. MODIFICATIONS:** This writing is the parties' final expression of intent. Notwithstanding anything contained in this Contract to the contrary no modification of this Contract shall be binding without mutual written consent of the Agency, and the Vendor, with approval of the Purchasing Division and the Attorney General's office (Attorney General approval is as to form only). Any change to existing contracts that adds work or changes contract cost, and were not included in the original contract, must be approved by the Purchasing Division and the Attorney General's Office (as to form) prior to the implementation of the change or commencement of work affected by the change.
- 25. WAIVER:** The failure of either party to insist upon a strict performance of any of the terms or provision of this Contract, or to exercise any option, right, or remedy herein contained, shall not be construed as a waiver or a relinquishment for the future of such term, provision, option, right, or remedy, but the same shall continue in full force and effect. Any waiver must be expressly stated in writing and signed by the waiving party.
- 26. SUBSEQUENT FORMS:** The terms and conditions contained in this Contract shall supersede any and all subsequent terms and conditions which may appear on any form documents submitted by Vendor to the Agency or Purchasing Division such as price lists, order forms, invoices, sales agreements, or maintenance agreements, and includes internet websites or other electronic documents. Acceptance or use of Vendor's forms does not constitute acceptance of the terms and conditions contained thereon.
- 27. ASSIGNMENT:** Neither this Contract nor any monies due, or to become due hereunder, may be assigned by the Vendor without the express written consent of the Agency, the Purchasing Division, the Attorney General's office (as to form only), and any other government agency or office that may be required to approve such assignments.
- 28. WARRANTY:** Vendor's Standard Service Warranty Agreement is attached hereto as Exhibit A.
- 29. STATE EMPLOYEES:** State employees are not permitted to utilize this Contract for personal use and the Vendor is prohibited from permitting or facilitating the same.
- 30. PRIVACY, SECURITY, AND CONFIDENTIALITY:** The Vendor agrees that it will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the Agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the Agency's policies, procedures, and rules. Vendor further agrees to comply with the Confidentiality Policies and Information Security Accountability Requirements, set forth in <http://www.state.wv.us/admin/purchase/privacy/default.html>.

31. YOUR SUBMISSION IS A PUBLIC DOCUMENT: Vendor's entire response to the Solicitation and the resulting Contract are public documents. As public documents, they will be disclosed to the public following the bid/proposal opening or award of the contract, as required by the competitive bidding laws of West Virginia Code §§ 5A-3-1 et seq., 5-22-1 et seq., and 5G-1-1 et seq. and the Freedom of Information Act West Virginia Code §§ 29B-1-1 et seq.

DO NOT SUBMIT MATERIAL YOU CONSIDER TO BE CONFIDENTIAL, A TRADE SECRET, OR OTHERWISE NOT SUBJECT TO PUBLIC DISCLOSURE.

Submission of any bid, proposal, or other document to the Purchasing Division constitutes your explicit consent to the subsequent public disclosure of the bid, proposal, or document. The Purchasing Division will disclose any document labeled "confidential," "proprietary," "trade secret," "private," or labeled with any other claim against public disclosure of the documents, to include any "trade secrets" as defined by West Virginia Code § 47-22-1 et seq. All submissions are subject to public disclosure without notice.

32. LICENSING: In accordance with West Virginia Code of State Rules § 148-1-6.1.e, Vendor must be licensed and in good standing in accordance with any and all state laws and requirements by any state agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agency or political subdivision. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Upon request, the Vendor must provide all necessary releases to obtain information to enable the Purchasing Division Director or the Agency to verify that the Vendor is licensed and in good standing with the above entities.

SUBCONTRACTOR COMPLIANCE: Vendor shall notify all subcontractors providing commodities or services related to this Contract that as subcontractors, they too are required to be licensed, in good standing, and up-to-date on all state obligations as described in this section. Obligations related to political subdivisions may include, but are not limited to, business licensing, business and occupation taxes, inspection compliance, permitting, etc. Notification under this provision must occur prior to the performance of any work under the contract by the subcontractor.

33. ANTITRUST: In submitting a bid to, signing a contract with, or accepting a Award Document from any agency of the State of West Virginia, the Vendor agrees to convey, sell, assign, or transfer to the State of West Virginia all rights, title, and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the State of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the State of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to Vendor.

34. VENDOR CERTIFICATIONS: By signing its bid or entering into this Contract, Vendor certifies (1) that its bid or offer was made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership, person or entity submitting a bid or offer for the same material, supplies, equipment or services; (2) that its bid or offer is in all respects fair and without collusion or fraud; (3) that this Contract is accepted or entered into without any prior understanding, agreement, or connection to any other entity that could be considered a violation of law; and (4) that it has reviewed this Solicitation in its entirety; understands the requirements, terms and conditions, and other information contained herein.

Vendor's signature on its bid or offer also affirms that neither it nor its representatives have any interest, nor shall acquire any interest, direct or indirect, which would compromise the performance of its services hereunder. Any such interests shall be promptly presented in detail to the Agency. The individual signing this bid or offer on behalf of Vendor certifies that he or she is authorized by the Vendor to execute this bid or offer or any documents related thereto on Vendor's behalf; that he or she is authorized to bind the Vendor in a contractual relationship; and that, to the best of his or her knowledge, the Vendor has properly registered with any State agency that may require registration.

35. VENDOR RELATIONSHIP: The relationship of the Vendor to the State shall be that of an independent contractor and no principal-agent relationship or employer-employee relationship is contemplated or created by this Contract. The Vendor as an independent contractor is solely liable for the acts and omissions of its employees and agents. Vendor shall be responsible for selecting, supervising, and compensating any and all individuals employed pursuant to the terms of this Solicitation and resulting contract. Neither the Vendor, nor any employees or subcontractors of the Vendor, shall be deemed to be employees of the State for any purpose whatsoever. Vendor shall be exclusively responsible for payment of employees and contractors for all wages and salaries, taxes, withholding payments, penalties, fees, fringe benefits, professional liability insurance premiums, contributions to insurance and pension, or other deferred compensation plans, including but not limited to, Workers' Compensation and Social Security obligations, licensing fees, etc. and the filing of all necessary documents, forms, and returns pertinent to all of the foregoing.

Vendor shall hold harmless the State, and shall provide the State and Agency with a defense against any and all claims including, but not limited to, the foregoing payments, withholdings, contributions, taxes, Social Security taxes, and employer income tax returns.

36. INDEMNIFICATION.

a. General Indemnity. Each party shall, at its expense, indemnify, hold harmless and, at the other party's request, defend, the other party and its directors, officers, employees and agents, from and against all losses, costs, liabilities or expenses (including reasonable attorney's fees and legal costs) arising out of any third-party claims related to the indemnifying party's performance under this Agreement to the extent caused by any grossly negligent act or omission or willful misconduct of the indemnifying party, or its employees or agents, that contributes to (i) any personal injury, sickness, disease, or death; (ii) any damage to, or destruction of, property of the indemnified party; or (iii) the

indemnifying party's violation of any statute, ordinance, or regulation.

b. Indemnity Procedure. The indemnifying party shall defend, at its expense, any such third-party claims provided that: (i) the indemnified party gives the indemnifying party prompt notice in writing of the third-party claims and permits the indemnifying party, through counsel of its choice, to answer and defend such claims; and (ii) provides all needed information, assistance, and authority, at the indemnifying party's expense, to enable them to defend such claims. The indemnifying party shall not be responsible for payment of any amounts under any settlement made without its prior written consent. In settling any claims hereunder, neither party shall be entitled to admit any liability on behalf of the other party.

37. PURCHASING AFFIDAVIT: In accordance with West Virginia Code §§ 5A-3-10a and 5-22-1(i), the State is prohibited from awarding a contract to any bidder that owes a debt to the State or a political subdivision of the State, Vendors are required to sign, notarize, and submit the Purchasing Affidavit to the Purchasing Division affirming under oath that it is not in default on any monetary obligation owed to the state or a political subdivision of the state.

38. CONFLICT OF INTEREST: Vendor, its officers or members or employees, shall not presently have or acquire an interest, direct or indirect, which would conflict with or compromise the performance of its obligations hereunder. Vendor shall periodically inquire of its officers, members and employees to ensure that a conflict of interest does not arise. Any conflict of interest discovered shall be promptly presented in detail to the Agency.

39. REPORTS: Vendor shall provide the Agency and/or the Purchasing Division with the following reports identified by a checked box below:

☐ Such reports as the Agency and/or the Purchasing Division may request. Requested reports may include, but are not limited to, quantities purchased, agencies utilizing the contract, total contract expenditures by agency, etc.

☐ Quarterly reports detailing the total quantity of purchases in units and dollars, along with a listing of purchases by agency. Quarterly reports should be delivered to the Purchasing Division via email at purchasing.division@wv.gov.

40. BACKGROUND CHECK: In accordance with W. Va. Code § 15-2D-3, the State reserves the right to prohibit a service provider's employees from accessing sensitive or critical information or to be present at the Capitol complex based upon results addressed from a criminal background check. Service providers should contact the West Virginia Division of Protective Services by phone at (304) 558-9911 for more information.

41. PREFERENCE FOR USE OF DOMESTIC STEEL PRODUCTS: Except when authorized by the Director of the Purchasing Division pursuant to W. Va. Code § 5A-3-56, no contractor may use or supply steel products for a State Contract Project other than those steel products made in the United States. A contractor who uses steel products in violation of this

section may be subject to civil penalties pursuant to W. Va. Code § 5A-3-56. As used in this section:

- a. "State Contract Project" means any erection or construction of, or any addition to, alteration of or other improvement to any building or structure, including, but not limited to, roads or highways, or the installation of any heating or cooling or ventilating plants or other equipment, or the supply of and materials for such projects, pursuant to a contract with the State of West Virginia for which bids were solicited on or after June 6, 2001.
- b. "Steel Products" means products rolled, formed, shaped, drawn, extruded, forged, cast, fabricated or otherwise similarly processed, or processed by a combination of two or more or such operations, from steel made by the open heath, basic oxygen, electric furnace, Bessemer or other steel making process. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
- c. The cost for each contract item used does not exceed one tenth of one percent (.1%) of the total contract cost or two thousand five hundred dollars (\$2,500.00), whichever is greater. For the purposes of this section, the cost is the value of the steel product as delivered to the project; or
- d. The Director of the Purchasing Division determines that specified steel materials are not produced in the United States in sufficient quantity or otherwise are not reasonably available to meet contract requirements.

42. PREFERENCE FOR USE OF DOMESTIC ALUMINUM, GLASS, AND STEEL: In Accordance with W. Va. Code § 5-19-1 et seq., and W. Va. CSR § 148-10-1 et seq., for every contract or subcontract, subject to the limitations contained herein, for the construction, reconstruction, alteration, repair, improvement or maintenance of public works or for the purchase of any item of machinery or equipment to be used at sites of public works, only domestic aluminum, glass or steel products shall be supplied unless the spending officer determines, in writing, after the receipt of offers or bids, (1) that the cost of domestic aluminum, glass or steel products is unreasonable or inconsistent with the public interest of the State of West Virginia, (2) that domestic aluminum, glass or steel products are not produced in sufficient quantities to meet the contract requirements, or (3) the available domestic aluminum, glass, or steel do not meet the contract specifications. This provision only applies to public works contracts awarded in an amount more than fifty thousand dollars (\$50,000) or public works contracts that require more than ten thousand pounds of steel products.

The cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than twenty percent (20%) of the bid or offered price for foreign made aluminum, glass, or steel products. If the domestic aluminum, glass or steel products to be supplied or produced in a "substantial labor surplus area", as defined by the United States Department of Labor, the cost of domestic aluminum, glass, or steel products may be unreasonable if the cost is more than thirty percent (30%) of the bid or offered price for foreign made aluminum, glass, or steel products. This preference shall be applied to an item of machinery or equipment, as indicated above, when the item is a single unit of equipment or machinery manufactured primarily of aluminum, glass or steel, is part of a public works contract and has the sole purpose or of being a permanent part of a single public works project. This provision does not apply to equipment or machinery purchased

by a spending unit for use by that spending unit and not as part of a single public works project.

All bids and offers including domestic aluminum, glass or steel products that exceed bid or offer prices including foreign aluminum, glass or steel products after application of the preferences provided in this provision may be reduced to a price equal to or lower than the lowest bid or offer price for foreign aluminum, glass or steel products plus the applicable preference. If the reduced bid or offer prices are made in writing and supersede the prior bid or offer prices, all bids or offers, including the reduced bid or offer prices, will be reevaluated in accordance with this rule.

43. INTERESTED PARTY SUPPLEMENTAL DISCLOSURE: W. Va. Code § 6D-1-2 requires that for contracts with an actual or estimated value of at least \$1 million, the vendor must submit to the Agency a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre- award interested party disclosure, within 30 days following the completion or termination of the contract. A copy of that form is included with this solicitation or can be obtained from the WV Ethics Commission. This requirement does not apply to publicly traded companies listed on a national or international stock exchange. A more detailed definition of interested parties can be obtained from the form referenced above.

44. PROHIBITION AGAINST USED OR REFURBISHED: Unless expressly permitted in the solicitation published by the State, Vendor must provide new, unused commodities, and is prohibited from supplying used or refurbished commodities, in fulfilling its responsibilities under this Contract.

45. VOID CONTRACT CLAUSES – This Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

DESIGNATED CONTACT: Vendor appoints the individual identified in this Section as the Contract Administrator and the initial point of contact for matters relating to this Contract.

Vivian Marini, Senior Manager, Commercial Support, Sales and Service Support
1 Geoffrey Way Wayne, N 07470
Phone: 862-221-5069
vivian.marini@getinge.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation in its entirety; that I understand the requirements, terms and conditions, and other information contained herein; that this bid, offer or proposal constitutes an offer to the State that cannot be unilaterally withdrawn; that the product or service proposed meets the mandatory requirements contained in the Solicitation for that product or service, unless otherwise stated herein; that the Vendor accepts the terms and conditions contained in the Solicitation, unless otherwise stated herein; that I am submitting this bid, offer or proposal for review and consideration; that I am authorized by the vendor to execute and submit this bid, offer, or proposal, or any documents related thereto on vendor's behalf; that I am authorized to bind the vendor in a contractual relationship; and that to the best of my knowledge, the vendor has properly registered with any State agency that may require registration.

By signing below, I further certify that I understand this Contract is subject to the provisions of West Virginia Code § 5A-3-62, which automatically voids certain contract clauses that violate State law.

Getinge USA Sales, LLC

DocuSigned by:

FDE9BA326B7003
(Authorized Signature)

Vivian Marini
Sr. Manager, Commercial Support
Phone: 973-7097351

9/9/2021

(Date)

REQUEST FOR QUOTATION
Maintenance on Getinge Sterilizer/Generator

SPECIFICATIONS

1. **PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Agriculture, Animal Health Division to establish a contract for annual maintenance for a Getinge sterilizer and generator.
2. **DEFINITIONS:** The terms listed below shall have the meanings assigned to them below. Additional definitions can be found in section 2 of the General Terms and Conditions.
 - 2.1 **“Contract Services”** means an annual maintenance contract for a Getinge sterilizer and generator as more fully described in these specifications.
 - 2.2 **“Pricing Page”** means the pages, contained wvOASIS or attached hereto as Exhibit A, upon which Vendor should list its proposed price for the Contract Services.
 - 2.3 **“Solicitation”** means the official notice of an opportunity to supply the State with goods or services that is published by the Purchasing Division.
3. **QUALIFICATIONS:** Vendor, or Vendor’s staff if requirements are inherently limited to individuals rather than corporate entities, shall have the following minimum qualifications:
 - 3.1. Must be a certified field service representative for manufacturer. Must show proof upon request.
4. **MANDATORY REQUIREMENTS:**
 - 4.1 **Mandatory Contract Services Requirements and Deliverables:** Contract Services must meet or exceed the mandatory requirements listed below.
 - 4.1.1 **Maintenance on Getinge Sterilizer and Generator**
 - 4.1.1.1 Must provide annual preventive maintenance labor four (4) times per year.
 - 4.1.1.2 Must provide unscheduled maintenance (callback) labor upon request.

REQUEST FOR QUOTATION
Maintenance on Getinge Sterilizer/Generator

4.1.1.3 Must provide telephone response time within four (4) hours.

4.1.1.4 Must provide onsite response within two (2) business days.

4.1.1.5 Vendor must use Getinge manufactured parts only.

4.1.1.6 Sterilization Model # 522LS, SN 04D05003

4.1.1.7 Generator Model # SES30C, SN GC319879R04

5. CONTRACT AWARD:

5.1 Contract Award: The Contract is intended to provide Agency with a purchase price for the Contract Services. The Contract shall be awarded to the Vendor that provides the Contract Services meeting the required specifications for the lowest overall total cost as shown on the Pricing Pages.

5.2 Pricing Page: Vendor should complete the Pricing Page by indicating Unit Price, Annual Price and Extended Amount. Vendor should complete the Pricing Page in full as failure to complete the Pricing Page in its entirety may result in Vendor's bid being disqualified.

Vendor should type or electronically enter the information into the Pricing Pages through wvOASIS, if available, or as an electronic document. In most cases, the Vendor can request an electronic copy of the Pricing Pages for bid purposes by sending an email request to the following address:

6. PERFORMANCE: Vendor and Agency shall agree upon a schedule for performance of Contract Services and Contract Services Deliverables, unless such a schedule is already included herein by Agency. In the event that this Contract is designated as an open-end contract, Vendor shall perform in accordance with the release orders that may be issued against this Contract.

7. PAYMENT: Agency shall pay for preventative maintenance parts and callback repair parts, as shown on the Pricing Pages, for all Contract Services performed and accepted under this Contract. Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

REQUEST FOR QUOTATION
Maintenance on Getinge Sterilizer/Generator

8. TRAVEL:

Vendor shall be responsible for all mileage and travel costs, including travel time, associated with performance of this Contract. Any anticipated mileage or travel costs may be included in the flat fee or hourly rate listed on Vendor's bid, but such costs will not be paid by the Agency separately.

9. FACILITIES ACCESS: Performance of Contract Services may require access cards and/or keys to gain entrance to Agency's facilities. In the event that access cards and/or keys are required:

- 9.1. Vendor must identify principal service personnel which will be issued access cards and/or keys to perform service.
- 9.2. Vendor will be responsible for controlling cards and keys and will pay replacement fee, if the cards or keys become lost or stolen.
- 9.3. Vendor shall notify Agency immediately of any lost, stolen, or missing card or key.
- 9.4. Anyone performing under this Contract will be subject to Agency's security protocol and procedures.
- 9.5. Vendor shall inform all staff of Agency's security protocol and procedures.

10. VENDOR DEFAULT:

- 10.1. The following shall be considered a vendor default under this Contract.
 - 10.1.1. Failure to perform Contract Services in accordance with the requirements contained herein.
 - 10.1.2. Failure to comply with other specifications and requirements contained herein.
 - 10.1.3. Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

REQUEST FOR QUOTATION
Maintenance on Getinge Sterilizer/Generator

10.1.4. Failure to remedy deficient performance upon request.

10.2. The following remedies shall be available to Agency upon default.

10.2.1. Immediate cancellation of the Contract.

10.2.2. Immediate cancellation of one or more release orders issued under this Contract.

10.2.3. Any other remedies available in law or equity.

11. MISCELLANEOUS:

11.1. Contract Manager: During its performance of this Contract, Vendor must designate and maintain a primary contract manager responsible for overseeing Vendor's responsibilities under this Contract. The Contract manager must be available during normal business hours to address any customer service or other issues related to this Contract. Vendor should list its Contract manager and his or her contact information below.

Contract Manager: Matt Feola
Telephone Number: 443 280 7800
Fax Number: _____
Email Address matt.feola@getinge.com

Maintenance on Geringe Sterilizer and Generator

PRICING PAGE					
Item No.	Description	Per Year	Unit Price	Annual Price	Extended Amount
1	1-year Maintenance Getinge 522LS Sterilization, 21 "Sm SN 04D05003 (4PM/year)	4	\$3,276.00	\$3,276.00	\$3,276.00
2	1-year Maintenance Getinge SES30C Generator SN GC319879R04 (4PM/year)	4	\$819.00	\$819.00	\$819.00
	Failure to use this form may result in disqualification			\$4,095.00	\$4,095.00
	Bidder / Vendor Information		GRAND TOTAL		
	Name:				
	Address:				
	Phone:				
	Email Address:				
	Authorized Signature:				

EXHIBIT A

GETINGE STANDARD SERVICE WARRANTY POLICY

1. Getinge's warranty shall be as provided in this Section 1 (the "Warranty"), subject in all respects to the exclusions set forth in the following Section 2, except as may be supplemented or amended by Exhibit A-1, if attached. Getinge warrants to Customer that (i) services provided to Customer hereunder shall be performed in a good and workmanlike manner in accordance with applicable industry standards for such services, and (ii) all parts furnished under this Agreement shall be free of material defects in material and workmanship at the time of installation and for a period 90 days, unless otherwise specified. Customer specifically acknowledges and agrees that Getinge's sole and exclusive liability to Customer for a material breach of this Warranty is limited to repair or replacement of the part(s) and/or reperformance of the services, as applicable, at the sole option of Getinge. This Agreement does not extend the period or coverage of any original warranty of the Equipment.

EXCEPT AS EXPRESSLY PROVIDED HEREIN, GETINGE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PARTS OR SERVICES PROVIDED BY GETINGE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PARTS DISTRIBUTED, BUT NOT MANUFACTURED, BY GETINGE ARE NOT WARRANTED BY GETINGE AND CUSTOMER MUST INSTEAD RELY ON THE REPRESENTATIONS AND WARRANTIES, IF ANY, PROVIDED DIRECTLY TO CUSTOMER BY THE MANUFACTURER OF SUCH EQUIPMENT.

2. **EXCLUSIONS.** The Service Plan and the Warranty shall not apply to the Equipment and shall be deemed null and void as to such Equipment if:

- (i) Equipment is not stored, installed, maintained or used in accordance with its applicable instructions for use or operating manual or if it is used for a purpose not indicated in the applicable instructions for use or operating manual;
- (ii) any repairs, alterations or other work has been performed by Customer or others on such Equipment, other than work performed or authorized by Getinge;
- (iv) Equipment has been damaged as a result, in whole or in part, from the use of components, accessories, parts or supplies not furnished by Getinge;
- (v) service to the Equipment and/or parts therefor are required as the result of abuse, misuse, improper maintenance, physical damage, accident, or the negligence of any party other than Getinge; or
- (vi) recommended preventative maintenance is not performed by Customer; or
- (vii) Equipment is moved from the Customer's current location.

The following are expressly excluded from the Warranty, and are not covered by the Service Plan:

- (i) cosmetic damage (e.g., nicks, dents, scrapes, scratches), however caused; and
- (ii) damage caused by accidental or unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power, air conditioning, humidity control, or transportation, or accident or disaster, including fire, water, wind and lightning, vandalism or burglary, or any other cause other than ordinary use.

Header 01

General Information

Contact Default Values

Document Information

Classification Request

List View

Procurement Folder: 881938

Procurement Type: Central Contract - Fixed Amt

Vendor ID: VS0000014820

Legal Name: DATASCOPE CORP

Alias/DEA:

Total Bid: \$4,095.00

Response Date: 05/27/2021

Response Time: 12:01

Responded By User ID: GelingUSA2017

First Name: Chris

Last Name: Schulte

Email: sue.evans@getinge.com

Phone: 973-709-7389

SO Doc Code: CRFQ

SO Dept: 1400

SO Doc ID: AGR2100000020

Published Date: 5/12/21

Close Date: 5/27/21

Close Time: 13:30

Status: Closed

Solicitation Description: Preventative Maintenance

Total of Header Attachments: 1

Total of All Attachments: 1



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

**State of West Virginia
Solicitation Response**

Proc Folder: 881938
Solicitation Description: Preventative Maintenance
Proc Type: Central Contract - Fixed Amt

Solicitation Closes	Solicitation Response	Version
2021-05-27 13:30	SR 1400 ESR05272100000007870	1

VENDOR VS0000014820 DATASCOPE CORP

Solicitation Number: CRFQ 1400 AGR2100000020

Total Bid: 4095

Response Date: 2021-05-27

Response Time: 12:01:39

Comments:

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

**Vendor
Signature X**

FEIN#

DATE

All offers subject to all terms and conditions contained in this solicitation

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Ln Total Or Contract Amount
1	Preventative Maintenance				4095.00
.	.				

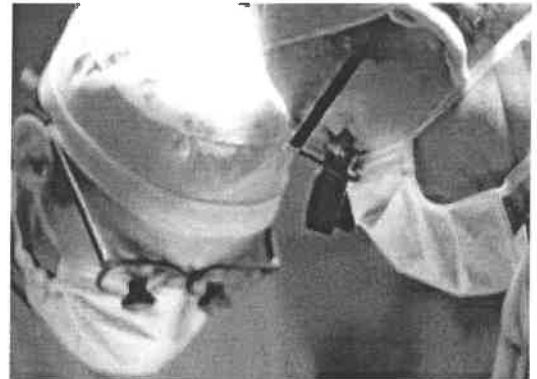
Comm Code	Manufacturer	Specification	Model #
81101706			

Commodity Line Comments:

Extended Description:

Pricing must be provided per the attached Exhibit A Pricing Page.

WEST VIRGINIA DEPT OF AGRICULTURE / 2149784
CHARLESTON, West Virginia, 25305



Amanda McKinnon
Service Plan Administrator



Getinge USA Sales, LLC
1 Geoffrey Way
Wayne, NJ 07470
(888)-9GETUSA

WEST VIRGINIA DEPT OF AGRICULTURE / 2149784
1900 KANAWHA BLVD EAST
CHARLESTON, West Virginia, 25305

Amanda McKinnon
Service Plan Administrator

Renee See
rsee@wvda.us

usmaintenanceagreements@getinge.com

Quote Number: 000099401.1
9/30/2021
Page 2 of 4

Quote is valid for 90 days

RENEWAL ☒ INITIAL ☐

Term: 10/1/2021 To: 09/30/2022

Agreement Number: _____

Getinge USA Sales, LLC

By: _____

Name: _____

Title: _____

Date: _____

CUSTOMER'S ACCEPTANCE

By: _____

Name: _____

Title: _____

Date: _____

Service Rep: Zachary Hails



Getinge USA Sales, LLC
1 Geoffrey Way
Wayne, NJ 07470
(888)-9GETUSA

WEST VIRGINIA DEPT OF AGRICULTURE / 2149784
1900 KANAWHA BLVD EAST
CHARLESTON, West Virginia, 25305

Amanda McKinnon
Service Plan Administrator

Renee See
rsee@wvda.us

usmaintenanceagreements@getinge.com

Quote Number: 000099401.1
9/30/2021
Page 3 of 4

GETINGE SERVICES QUOTE SUMMARY

Description	Yearly Option	Total Price
IC Getinge Care Plus Plan	1	\$ 4,095.00 (Total 1 Year)

Payment Terms: Annual

<u>Line</u>	<u>Model Description</u>	<u>Serial No.</u>	<u>PM's Per Year</u>
1	522LS Sterilization,21" Sm	04D05003	4
2	SES30C GENERATOR	GC319879R04	4



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Wayne, NJ 07470
(888)-9GETUSA

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Amanda McKinnon
Service Plan Administrator

Renee See
rsee@wvda.us

usmaintenanceagreements@getinge.com

Quote Number: 000099401.1
9/30/2021
Page 4 of 4

IC
Quote Line Items

Description	Qty	Unit Price	Annual Price	Extended Price
PLUS Sterilizer 1Y	1	\$3,276.00	\$3,276.00	\$3,276.00
PLUS Generator 1Y	1	\$819.00	\$819.00	\$819.00

Getinge USA Sales, LLC (Getinge) is pleased to submit the following quotation for the services described herein at the stated prices and terms. **UNLESS THIS QUOTATION HAS BEEN DESIGNATED BY GETINGE AS BEING GOVERNED BY AN APPLICABLE GROUP PURCHASING ORGANIZATION OR INTEGRATED DELIVERY NETWORK AGREEMENT, THIS QUOTATION WILL BE GOVERNED BY GETINGE'S SERVICE AGREEMENT TERMS & CONDITIONS FOUND AT: getinge.com/serviceterms.** Any prior or collateral agreements, representations, promises or conditions, whether written or oral, in connection herewith, are superseded hereby. No modifications, waivers or termination of any provisions contained in this Agreement or any future agreements, representations, promises or conditions in connection with the subject matter hereof shall be binding upon Getinge unless made in writing and signed by an authorized officer thereof. Acceptance of any Customer's purchase order does not operate as acceptance of any different or additional terms. None of Getinge's terms may be rejected or revoked by Customer without the consent of Getinge's Legal Team. If you have any questions about this Agreement, please contact your local Getinge Service Representative. By signing this Quotation, you agree that you have reviewed and accepted Getinge's Terms and Conditions of Sales available at getinge.com/serviceterms, and that you accept and agree to all of the terms hereof.

GETINGE USA SALES, LLC
SERVICE TERMS AND CONDITIONS

The servicing of certain equipment, identified in a price quote signed by Getinge USA Sales, LLC ("Getinge") and Customer ("Quote"), is expressly conditioned on Customer's assent to these Service Terms and Conditions ("Terms and Conditions"). The Terms and Conditions are applicable to the extended warranty or service plan included in Quote ("Service Plan"). Any additional or revised terms, proposed by Customer, are expressly rejected and are not binding upon Getinge unless agreed to in writing. Any oral or written representation, warranty, or course of dealing not contained in these Terms and Conditions shall not be binding on either party.

- 1) Service Plan. The Service Plan provides details of the agreed upon scope of services, rates, and hours of operation.
- 2) Payment Terms. The amount listed on the Quote ("Annual Price") is due from Customer in accordance with the terms specified in the Quote. Any services outside of the scope of the Service Plan will be charged at the prevailing rates. Customer will make payment for services within thirty (30) days from the date of Getinge's invoice.
- 3) Taxes. Each party will be responsible, as required under applicable law, for identifying and paying all taxes at are imposed on that party with respect to the transactions and payments thereunder. Customer agrees to pay applicable sales, use, value added and service taxes that Getinge includes on invoice and is legally obligated to collect from Customer. However, if Customer furnishes Getinge with an exemption certificate covering such taxes, it is not obligated to pay such taxes.
- 4) Inspection of Equipment. Equipment, not previously covered by a Getinge extended warranty plan or other service plan, is subject to inspection to determine its condition. If any repairs are required to meet the original manufacturer's specifications, or if Equipment is unrepairable, Getinge may amend the Quote to remove such Equipment and make an adjustment to the Annual Price.
- 5) Parts. Getinge may utilize new and refurbished parts in its performance under the Service Plan. All replacement parts are installed as an exchange for the existing parts. Upon removal of any parts from the Equipment, such parts become the property of Getinge.
- 6) Termination. Either party may terminate this Agreement, in whole or in part, at any time, with thirty (30) days prior written notice. Upon receipt of notice, Getinge may cancel any services scheduled to be performed after the termination date. Customer will be invoiced for charges incurred through the termination date. Upon termination or expiration, Getinge will not be responsible for repairing Equipment, which required repair prior to the termination or expiration date, if: (i) Getinge is advised after the expiration or termination date; or (ii) repair visit is not scheduled prior to termination or expiration. In the event of termination, a credit memo, for the amount paid for services that were not performed, shall be provided to the Customer.
- 7) Service Warranty. Getinge's Standard Service Warranty Policy applies to all Services and is attached as Exhibit A.
- 8) Indemnification.
 - a) General Indemnity. Each party shall, at its expense, indemnify, hold harmless and, at the other party's request, defend, the other party and its directors, officers, employees and agents, from and against all losses, costs, liabilities or expenses (including reasonable attorney's fees and legal costs) arising out of any third-party claims related to the indemnifying party's performance under this Agreement to the extent caused by any grossly negligent act or omission or willful misconduct of the indemnifying party, or its employees or agents, that contributes to (i) any personal injury, sickness, disease, or death; (ii) any damage to, or destruction of, property of the indemnified party; or (iii) the indemnifying party's violation of any statute, ordinance, or regulation.

- b) Indemnity Procedure. The indemnifying party shall defend, at its expense, any such third-party claims provided that: (i) the indemnified party gives the indemnifying party prompt notice in writing of the third-party claims and permits the indemnifying party, through counsel of its choice, to answer and defend such claims; and (ii) provides all needed information, assistance, and authority, at the indemnifying party's expense, to enable them to defend such claims. The indemnifying party shall not be responsible for payment of any amounts under any settlement made without its prior written consent. In settling any claims hereunder, neither party shall be entitled to admit any liability on behalf of the other party.
- 9) Limitation of Liability. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY COMMERCIAL LOSSES, LOSS OF REVENUES OR PROFITS, LOSS OF GOODWILL, INCONVENIENCE, OR EXEMPLARY, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM, WHETHER IN CONTRACT OR TORT, WHETHER FROM BREACH OF THIS AGREEMENT OR OTHERWISE, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, EXCEPT FOR CLAIMS FOR INDEMNIFICATION, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY BREACH OF THIS AGREEMENT SHALL NOT EXCEED THE ANNUAL PRICE PAID BY CUSTOMER FOR SERVICES UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTHS PRECEDING THE EVENT GIVING RISE TO SUCH LIABILITY.
- Getinge shall not be liable for (i) any use, modifications, service or maintenance of Equipment by personnel, of Customer or otherwise, who have not been trained by Getinge or Getinge-approved personnel, (ii) any use, modifications, service or maintenance of Equipment not expressly authorized by Getinge, or (iii) any negligence or willful misconduct of Customer, its employees or agents, or any party other than Getinge. This section shall survive termination or expiration of this Agreement.
- 10) Confidential Information. Each party agrees to keep confidential any non-public information of the other party received in any form, including without limitation, these Terms and Conditions and any service or repair documentation provided in connection with the performance of the Service Plan. Each party will treat confidential information with the same degree of care as it keeps its own confidential information, but in no event less than reasonable care. Each party may share the confidential information with its employees, representatives, and advisors, subject to the same restrictions set forth herein. If the disclosure of the other party's confidential information is required by law, then the party required to make such disclosure shall provide sufficient notice to the other party to allow such party time to take legal or other action to prevent or obtain confidential treatment of such disclosure.
- 11) HIPAA; Protected Health Information ("PHI"). Getinge does not use nor expect to receive any PHI as defined under HIPAA or HITECH during its routine service calls. To the extent Getinge receives any incidental disclosure of PHI as defined under 45 C.F.R. §164.502(a)(1)(iii), Getinge agrees to keep such PHI confidential.
- 12) Insurance. Getinge and Customer each agree to maintain the following insurance coverages with licensed insurers with a minimum A.M. Best rating of "A" with the following minimum limits: (a) Commercial General Liability, including products liability and completed operations coverage, with at least \$1,000,000 each occurrence and \$3,000,000 general aggregate; (b) Automobile Liability for all owned, now-owned, and hired vehicles, with at least \$1,000,000 each occurrence; and (c) Workers Compensation insurance in amounts that satisfy applicable statutory limits. Upon request, Getinge shall provide Customer with a certificate or other evidence of insurance in form and amounts in compliance with this section.
- 13) Discount Disclosure. The price for the Service Plan may reflect discounts, or other reductions in price to services and parts purchased hereunder. To the extent applicable, Customer agrees to appropriately report the actual prices paid for any services and parts, inclusive of all discounts and reductions in prices paid for services, in accordance with Section 1128B(b)(3)(A) of the Social Security Act, 42 C.F.R. §1001.952(h), and

42 U.S.C. §1320a-7b(b)(3)(A), and other applicable laws and regulations as amended. Customer shall retain these Terms and Conditions, applicable Quote, and related documentation identifying Service Plan discounts and reductions in price, and make such information available, upon request, to federal and state healthcare programs. Customer may request additional information and documentation from Getinge to facilitate its reporting obligations.

- 14) Access to Customer's Facility. To the extent services under this Agreement are performed at Customer's facility, Getinge shall ensure that its personnel will comply with all applicable policies and requirements, provided by Customer to Getinge, pertaining to business and office conduct and health and safety. This includes, but is not limited to, Customer's health screening and background check requirements.
- 15) Debarment. Each party represents and warrants that neither it, nor any of its affiliates, employees, agents, or representatives ("Representatives") performing under these Terms and Conditions are, or have within the past five (5) years have been, debarred or excluded from participation in any federal or state healthcare programs. Each party will promptly notify the other in the event of any actual or threatened debarment of any party or its Representatives. Either party may terminate any pending transactions made pursuant to these Terms and Conditions upon receiving such notice.
- 16) Force Majeure. Neither party shall be liable for any delay or failure of performance if and to the extent such delay or failure is caused, directly or indirectly, by circumstances beyond its reasonable control and that by the exercise of due diligence it is unable to prevent, including without limitation acts of God, civil or military authority, acts of public enemy, war, accidents, fires, explosions, earthquakes, flood, the elements, epidemics or pandemics, strikes, labor disputes, shortages of fuel, power, suitable parts, materials, labor or transportation, government or regulatory restrictions or regulations provided that the non-performing party uses commercially reasonable efforts to overcome the same.
- 17) Remedies. The rights and remedies of each party provided under these Terms and Conditions are cumulative and not exclusive, and are in addition to any other rights and remedies provided at law or in equity.
- 18) Independent Contractors. The relationship of the parties is that of independent contractors. Neither party shall be considered a partner, agent, or employee of the other. Neither party has any express or implied right to assume or create any obligation on behalf of, or in the name of the other party or to bind the other party to any contract, agreement or undertaking with any third party, and no conduct of a party shall be deemed to imply such right.
- 19) Assignment. Neither party shall assign their rights and obligations under this transaction to any third party, except to a wholly owned subsidiary, without the prior written consent of the other party. Any permitted assignee shall assume in writing all obligations of the assigning party as set forth hereunder.
- 20) Books and Records. Getinge agrees that, until the expiration of four (4) years after the furnishing of any services pursuant to these Terms and Conditions, it will make available upon written request of the Secretary of Health and Human Services or the Comptroller General of the United States or any of their duly authorized representatives, copies of these Terms and Conditions and any other data of Getinge necessary to certify the nature and extent of costs incurred by Customer for services.
- 21) Entire Agreement. These Terms and Conditions and the applicable Getinge Quote contains the entire agreement between the parties with respect to this transaction, and supersedes all previous agreements, negotiations, discussions, writings, understandings, and commitments related thereto. Any modification to these Terms and Conditions or the applicable Quote must be in writing and signed by each party's authorized representative.

- 22) Governing Law. These terms and Conditions shall be governed by the laws of the State of New York, United States, without regard to its conflict of laws principles.
- 23) Arbitration. Getinge and Customer agree that all disputes arising out of these Terms and Conditions will be resolved by a single binding arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and will be conducted exclusively in New York and governed by New York laws.
- 24) Notice. Any notices required or permitted under these Terms and Conditions shall be in writing and will be sent by recognized national or international overnight courier or registered or certified mail, postage prepaid, return receipt requested, or delivered by hand to the address set forth in the Quote. Notices will be deemed to be duly given: (a) when delivered by hand; (b) two (2) days after deposit with a recognized national or international courier; or (c) on the delivery date indicated in the return receipt for registered or certified mail. A party may change its contact information immediately upon written notice to the other party in accordance with this section.
- 25) Waiver. Any waiver of any rights or obligations under these Terms and Conditions must be mutually agreed upon in writing and signed by an authorized representative of each party. No act or omission, including payment for a service, shall constitute a waiver of any right or obligation hereunder.
- 26) Severability. If any provision of the Terms and Conditions is held to be invalid or unenforceable, the remaining provisions will remain in full force and effect.
- 27) Survival. All provisions of these Terms and Conditions that by their nature should survive the performance of the transactions made hereunder shall do so, subject to the limitations contained herein.

EXHIBIT A
GETINGE USA SALES, LLC
STANDARD SERVICE WARRANTY POLICY

Subject to the exclusions set forth below, Getinge's warranty shall be as provided in this Exhibit ("Warranty").

1) Warranty

- a) Getinge warrants to Customer that (i) services provided to Customer hereunder shall be performed in a good and workmanlike manner in accordance with applicable industry standards for such services, and (ii) all parts furnished under this Agreement shall be free of material defects in material and workmanship at the time of installation and for a period of ninety (90) days, unless otherwise specified.
- b) Customer specifically acknowledges and agrees that Getinge's sole and exclusive liability to Customer for a material breach of this Warranty is limited to repair or replacement of the part(s) and/or reperformance of the services, as applicable, at the sole option of Getinge.
- c) This Agreement does not extend the period or coverage of any original warranty of the Equipment.
- d) EXCEPT AS EXPRESSLY PROVIDED HEREIN, GETINGE MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO ANY PARTS OR SERVICES PROVIDED BY GETINGE INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. PARTS DISTRIBUTED, BUT NOT MANUFACTURED, BY GETINGE ARE NOT WARRANTED BY GETINGE. CUSTOMER MUST INSTEAD RELY ON THE REPRESENTATIONS AND WARRANTIES, IF ANY, PROVIDED DIRECTLY TO CUSTOMER BY THE MANUFACTURER OF SUCH EQUIPMENT.

2) EXCLUSIONS

- a) The Service Plan and Warranty shall not apply and shall be deemed null and void as to such Equipment if:
 - i. Equipment is not stored, installed, maintained or used in accordance with its applicable instructions for use or operating manual or if it is used for a purpose not indicated in the applicable instructions for use or operating manual;
 - ii. any repairs, alterations or other work has been performed by Customer or others on such Equipment, other than work performed or authorized by Getinge;
 - iii. Equipment has been damaged as a result, in whole or in part, from the use of components, accessories, parts or supplies not furnished by Getinge;
 - iv. service of the Equipment and/or parts therefor are required as the result of abuse, misuse, improper maintenance, physical damage, accident, or the negligence of any party other than Getinge;
 - v. recommended preventative maintenance is not performed by Customer; or
 - vi. Equipment is moved from the Customer's current location.
- b) The following are expressly excluded from the Warranty, and are not covered by the Service Plan;
 - i. Cosmetic damage (e.g. nicks, dents, scrapes, scratches), however caused; and
 - ii. damage caused by accidental or unusual physical, electrical or electromagnetic stress, neglect, misuse, failure of electric power, air conditioning, humidity control, or transportation, or accident or disaster, including fire, water, wind and lightning, vandalism or burglary, or any other cause other than ordinary use.



Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Centralized Request for Quote
Miscellaneous

Proc Folder: 881938			Reason for Modification:
Doc Description: Preventative Maintenance			
Proc Type: Central Contract - Fixed Amt			
Date Issued	Solicitation Closes	Solicitation No	Version
2021-05-12	2021-05-27 13:30	CRFQ 1400 AGR2100000020	1

BID RECEIVING LOCATION

BID CLERK
DEPARTMENT OF ADMINISTRATION
PURCHASING DIVISION
2019 WASHINGTON ST E
CHARLESTON WV 25305
US

VENDOR

Vendor Customer Code:

Vendor Name : Getinge USA Sales, LLC

Address : 1 Geoffrey Way, Wayne NJ 07470

Street :

City :

State :

Country :

Zip :

Principal Contact : Jay Rae

Vendor Contact Phone: jay.rae@getinge.com

Extension:

FOR INFORMATION CONTACT THE BUYER

Jessica S Chambers
(304) 558-0246
jessica.s.chambers@wv.gov

DocuSigned by:
Vendor Signature X 9E063A1FCD4F4A4...

FEIN#

DATE 05/25/2021

All offers subject to all terms and conditions contained in this solicitation

ADDITIONAL INFORMATION

The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Agriculture, Animal Health Division to establish a contract for annual maintenance for a Getinge sterilizer and generator per the terms and conditions and specifications as attached.

INVOICE TO

AGRICULTURE
DEPARTMENT OF
ADMINISTRATIVE SERVICES
1900 KANAWHA BLVD E
CHARLESTON WV
US

SHIP TO

AGRICULTURE
DEPARTMENT OF
MOOREFIELD FIELD OFFICE
60B INDUSTRIAL PARK RD
MOOREFIELD WV
US

Line	Comm Ln Desc	Qty	Unit Issue	Unit Price	Total Price
1	Preventative Maintenance				

Comm Code	Manufacturer	Specification	Model #
81101706			

Extended Description:

Pricing must be provided per the attached Exhibit A Pricing Page.

SCHEDULE OF EVENTS

<u>Line</u>	<u>Event</u>	<u>Event Date</u>
1	TECHNICAL QUESTION DEADLINE	2021-05-21



CERTIFICATE OF LIABILITY INSURANCE

Page 1 of 1

DATE (MM/DD/YYYY)

10/04/2021

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER
Willis of New Jersey, Inc.
c/o 26 Century Blvd
P.O. Box 305191
Nashville, TN 37205191 USA

CONTACT
NAME: Willis Towers Watson Certificate Center
PHONE
(A/C, No, Ext): 1-877-945-7378 FAX
(A/C, No): 1-888-467-2378
E-MAIL
ADDRESS: certificates@willis.com

INSURED
Getinge USA Sales, LLC
45 Barbour Pond Drive
Wayne, NJ 07470

INSURER(S) AFFORDING COVERAGE	NAIC #
INSURER A: Zurich American Insurance Company	16535
INSURER B: Liberty Mutual Fire Insurance Company	23035
INSURER C: Liberty Insurance Corporation	42404
INSURER D:	
INSURER E:	
INSURER F:	

COVERAGES

CERTIFICATE NUMBER: W22404726

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY					
	<input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR					
	<input checked="" type="checkbox"/> Products / Completed Operation					
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	<input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PROJECT <input type="checkbox"/> LOC					
	OTHER:					
B	AUTOMOBILE LIABILITY					
	<input checked="" type="checkbox"/> ANY AUTO					
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS					
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					
	UMBRELLA LIAB					
	<input type="checkbox"/> EXCESS LIAB					
	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					
	DED RETENTION \$					
C	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N				
	If yes, describe under DESCRIPTION OF OPERATIONS below	No				
		N/A				
C	Workers Compensation and Employers Liability					
	Per Statute					

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

State of West Virginia is included as an Additional Insured as respects to General Liability and Auto Liability.

CERTIFICATE HOLDER

West Virginia Department of Administration
Purchasing Division
2019 Washington St. East
Charleston, WV 25305

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE

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