



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

State of West Virginia
Contract

Order Date: 12-02-2024

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 8506 AGR2500000006 1	Procurement Folder:	1574573
Document Name:	MALDI TOF MASS SPECTROMETER	Reason for Modification:	
Document Description:	MALDI-TOF Biotyper Sirius GP System and Support		
Procurement Type:	Central Contract - Fixed Amt		
Buyer Name:	Larry D McDonnell		
Telephone:	304-558-2063		
Email:	larry.d.mcdonnell@wv.gov		
Shipping Method:	Best Way	Effective Start Date:	2024-12-01
Free on Board:	FOB Dest, Freight Prepaid	Effective End Date:	2025-11-30

VENDOR	DEPARTMENT CONTACT																				
Vendor Customer Code: VC0000063654 BRUKER SCIENTIFIC LLC 40 MANNING RD BILLERICA MA 01821 US Vendor Contact Phone: 000-000-0000 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: Tina R Withrow Requestor Phone: 3045582221 Requestor Email: tina.r.withrow@wv.gov 2025 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 304-558-2227 AGRICULTURE DEPARTMENT OF REGULATORY PROTECTION DIVISION 313 GUS R DOUGLAS LN, BLDG 11 CHARLESTON WV 25312 US

CR 12-5-24

Total Order Amount: \$303,290.30

Purchasing Division's File Copy

YH 12/04/24

PURCHASING DIVISION AUTHORIZATION DATE: <i>Tina R Withrow 12/5/24</i> ELECTRONIC SIGNATURE ON FILE	ATTORNEY GENERAL APPROVAL AS TO FORM DATE: <i>John L. Gray 12/6/2024</i> ELECTRONIC SIGNATURE ON FILE	ENCUMBRANCE CERTIFICATION <i>Calvin Reese</i> DATE: <i>12-6-24</i> ELECTRONIC SIGNATURE ON FILE
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Extended Description:

THE VENDOR, BRUKER SCIENTIFIC LLC, AGREES TO ENTER WITH THE AGENCY, WEST VIRGINIA DEPARTMENT OF AGRICULTURE, INTO A CONTRACT FOR MALTI TOF BIOTYPER SIRIUS GP SYSTEM AND PREVENTATIVE MAINTENANCE PER THE TERMS AND CONDITIONS, SPECIFICATIONS, BID REQUIREMENTS, ADDENDUM NO. 1 ISSUED 07/24/2024 AND THE VENDOR'S BID DATED 07/26/2024, INCORPORATED HEREIN BY REFERENCE, AND MADE A PART OF HEREOF.

OPTIONAL RENEWAL PREVENTATIVE MAINTENANCE SERVICE FOR YEARS 2, 3 AND 4 WILL BE ADDED BY SUBSEQUENT CHANGE ORDER UPON MUTUAL AGREEMENT BETWEEN BOTH PARTIES.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
1	41115404	0.00000		0.000000	\$278,875.30
Service From	Service To	Manufacturer	Model No		
2024-12-01	2025-11-30				

Commodity Line Description: MALDI-TOF Biotyper Sirius GP System

Extended Description:

See attached documentation for further details.

Line	Commodity Code	Quantity	Unit	Unit Price	Total Price
2	41115404	0.00000		0.000000	\$24,415.00
Service From	Service To	Manufacturer	Model No		
2024-12-01	2025-11-30				

Commodity Line Description: MALDI-TOF Biotyper Sirius GP System -
Maintenance Service

Extended Description:

MALDI-TOF Biotyper Sirius GP System -
Maintenance Service. See attached documentation for further details.

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: The Initial Contract Term will be for a period of one (1) year. The Initial Contract Term becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and the Initial Contract Term ends on the effective end date also shown on the first page of this Contract.

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 three (3) 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:

☐ the contract will continue for _____ years;

☐ the 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).

☐ **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.

☐ **Construction/Project Oversight:** This Contract becomes effective on the effective start date listed on the first page of this Contract, identified as the State of West Virginia contract cover page containing the signatures of the Purchasing Division, Attorney General, and Encumbrance clerk (or another page identified as _____), and continues until the project for which the vendor is providing oversight is complete.

☐ **Other:** Contract Term specified in _____

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.

☐ **Construction:** This Contract is for construction activity more fully defined in the specifications.

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 in this section must be provided to the Purchasing Division by the Vendor as specified:

☐ **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.

☒ Documentation demonstrating access and trained personnel for software required to run instrument or plan to cover cost of support provided by instrument manufacturer as required by specification 3.1.1.2

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The apparent successful Vendor shall also furnish proof of any 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 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 that insurance requirement is listed in this section.

Vendor must maintain:

☒ **Commercial General Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☒ **Automobile Liability Insurance** in at least an amount of: \$1,000,000.00 per occurrence.

☐ **Professional/Malpractice/Errors and Omission Insurance** in at least an amount of: _____ 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: _____ per occurrence.

☐ **Cyber Liability Insurance** in an amount of: _____ per occurrence.

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

☐ **Pollution Insurance** in an amount of: _____ per occurrence.

☐ **Aircraft Liability** in an amount of: _____ per occurrence.

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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. VENUE: All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

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. Vendor shall pay liquidated damages in the amount specified below or as described in the specifications:

☐ _____ for _____.

☐ Liquidated Damages Contained in the Specifications.

☐ Liquidated Damages Are Not Included in this Contract.

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 and P-Card. (The State of West Virginia's Purchasing Card program, administered under contract by a banking institution, processes payment for goods and services through state designated credit cards.)

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 regarding 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, state, and local 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: The Vendor expressly warrants that the goods and/or services covered by this Contract will: (a) conform to the specifications, drawings, samples, or other description furnished or specified by the Agency; (b) be merchantable and fit for the purpose intended; and (c) be free from defect in material and workmanship.

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 www.state.wv.us/admin/purchase/privacy.

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 and local laws and requirements by any state or local 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 and local 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 NON-CONFLICT: Neither Vendor nor its representatives are permitted to have any interest, nor shall they 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.

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: The Vendor agrees to indemnify, defend, and hold harmless the State and the Agency, their officers, and employees from and against: (1) Any claims or losses for services rendered by any subcontractor, person, or firm performing or supplying services, materials, or supplies in connection with the performance of the Contract; (2) Any claims or losses resulting to any person or entity injured or damaged by the Vendor, its officers, employees, or subcontractors by the publication, translation, reproduction, delivery, performance, use, or disposition of any data used under the Contract in a manner not authorized by the Contract, or by Federal or State statutes or regulations; and (3) Any failure of the Vendor, its officers, employees, or subcontractors to observe State and Federal laws including, but not limited to, labor and wage and hour laws.

37. NO DEBT CERTIFICATION: 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. By submitting a bid, or entering into a contract with the State, Vendor is affirming that (1) for construction contracts, the Vendor is not in default on any monetary obligation owed to the state or a political subdivision of the state, and (2) for all other contracts, neither the Vendor nor any related party owe a debt as defined above, and neither the Vendor nor any related party are in employer default as defined in the statute cited above unless the debt or employer default is permitted under the statute.

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 hearth, basic oxygen, electric furnace, Bessemer or other steel making process.
- c. The Purchasing Division Director may, in writing, authorize the use of foreign steel products if:
 1. 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
 2. 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 disclosure of interested parties prior to beginning work under this Contract. Additionally, the Vendor must submit a supplemental disclosure of interested parties reflecting any new or differing interested parties to the contract, which were not included in the original pre-work 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.

46. ISRAEL BOYCOTT: Bidder understands and agrees that, pursuant to W. Va. Code § 5A-3-63, it is prohibited from engaging in a boycott of Israel during the term of this contract.

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.

(Printed Name and Title) Canlon Bruer Sales Account Executive

(Address) 40 Manning Road Billerica, MA 01821

(Phone Number) / (Fax Number) Cell 773-556-3673 Fax 978-667-5993

(email address) canlon.bruer@bruker.com

CERTIFICATION AND SIGNATURE: By signing below, or submitting documentation through wvOASIS, I certify that: I have reviewed this Solicitation/Contract 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/Contract 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 this bid or offer was made without prior understanding, agreement, or connection with any entity submitting a bid or offer for the same material, supplies, equipment or services; that this bid or offer is in all respects fair and without collusion or fraud; 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; 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; and that pursuant to W. Va. Code 5A-3-63, the entity entering into this contract is prohibited from engaging in a boycott against Israel.

Bruker Scientific LLC

(Company)
Canlon Bruer

(Signature of Authorized Representative)

Canlon Bruer Sales Account Executive 7/26/24

(Printed Name and Title of Authorized Representative) (Date)

Cell 773-556-3673 Fax (978) 667-5993

(Phone Number) (Fax Number)

canlon.bruer@bruker.com

(Email Address)

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

SPECIFICATIONS

- 1. PURPOSE AND SCOPE:** The West Virginia Purchasing Division is soliciting bids on behalf of West Virginia Department of Agriculture to establish a contract for the purchase MALDI TOF Biotyper sirius General Purpose System for mass spectrometry and any other software and components needed.
- 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 Item”** means one Matrix-Assisted Laser Desorption / Ionization – Time of Flight (MALDI TOF) Biotyper sirius General Purpose (GP) System as more fully described by these specifications.
 - 2.2 “Pricing Page”** means the pages attached as Exhibit A, upon which Vendor should list its proposed price for the Contract Items.
 - 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. GENERAL REQUIREMENTS:**
 - 3.1 Mandatory Contract Item Requirements:** Contract Item must meet or exceed the mandatory requirements listed below.
 - 3.1.1 MALDI-TOF sirius GP System**
 - 3.1.1.1 MALDI TOF Biotyper sirius GP System** instrument must be at a minimum validated by Association of Official Analytical Collaboration International (AOAC) Official Methods of Analysis (OMA) to the following methodologies:
 - 3.1.1.1.1 AOAC – OMA #2017.09** for Confirmation and Identification of Salmonella spp, Cronobacter spp. and Other Gram Negative Organism
 - 3.1.1.1.2 AOAC-OMA #2017.10** for Confirmation and Identification of Listeria monocytogenes, Listeria spp. and Other Gram Positive Organisms
 - 3.1.1.1.3 Vendor** must provide documentation showing validation upon request.

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

3.1.1.2 MALDI TOF Biotyper sirius GP System must be compatible with MALDI Biotyper Compass software. Vendor must provide documentation upon request that they have trained personnel for specific software and access in order to provide support or cover the cost of support provided by the equipment manufacturer. Support at a minimum must provide for the following:

3.1.1.2.1 Vendor must have ability to provide helpdesk support Monday-Friday from 8:00 am-4:00 pm. EST/EDT

3.1.1.2.2 Vendor must respond to requests for service within 24 hours.

3.1.1.2.3 Replacement parts and equipment must be provided within one week of request.

3.1.1.2.4 Requests for onsite service must be fulfilled within one month upon request.

3.1.1.3 MALDI TOF Biotyper sirius GP System must come with MBT Subtyping Module that allows for the differentiation of closely related *Listeria* species and *Staph aureus* typing for MRSA and Explorer Module that allows for statistical analysis and detailed comparison of measured spectra of an active database and creation of new reference libraries

3.1.1.4 MALDI TOF Biotyper sirius GP System technicians must be certified and trained to provide software updates.

3.1.1.5 MALDI TOF Biotyper sirius GP System must come with a MALDI Biotyper (MBT) Shuttle Target Holder that must securely hold target plates and be ergonomic.

3.1.1.6 MALDI TOF Biotyper sirius GP System must have minimum 96 well target plate that is disposable

3.1.1.7 MALDI TOF Biotyper sirius GP System must come with a computer system that must be compatible with the instrument.

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

- 3.1.1.7.1** The computer system must be capable of running the latest version of Windows.
- 3.1.1.7.2** The computer system must include a monitor that is compatible with the system.
- 3.1.1.7.3** The computer system must come with require cables in order to make the system operational.

- 3.1.1.8** MALDI TOF Biotyper sirius GP System must come with a compatible 115 Volt input uninterrupted power supply (UPS), cable sets, mouse, and a color laser printer such as HP LaserJet Enterprise M455dn or equivalent that can print a minimum 45 pages per minute, minimum of 600 x 600 dpi resolution, and has optional 2-sided printing. All computer equipment must be compatible with each other and the instrument.

- 3.1.1.9** MALDI TOF Biotyper sirius GP System must provide bacterial test standards for use on the instrument. These standards must conform to vendor specifications for the stated organism and match spectra with the reference library.

- 3.1.1.10** Unit price bid for the MALDI TOF Biotyper Sirius GP System must include shipping costs to the delivery address per section 6.1.

- 3.1.1.11** MALDI TOF Biotyper sirius GP System vendor must provide on-site training during installation for a minimum of one day and five people including demonstration of use of system and assistance in programming.

- 3.1.1.12** Must provide a minimum of one (1) year warranty that covers parts and labor, including the repair/replacement of defective parts or the item itself. Replacement parts must be provided one week after request.

4. CONTRACT AWARD:

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

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

- 4.2 Pricing Page:** Vendor should complete the Pricing Page attached as Exhibit A by including item numbers, model number/brand name, unit price, extended amount, and grand total. 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 Page to prevent errors in the evaluation.

5. PAYMENT:

- 5.1 Payment:** Vendor shall accept payment in accordance with the payment procedures of the State of West Virginia.

6. DELIVERY AND RETURN:

- 6.1 Shipment and Delivery:** Vendor shall ship the Contract Items immediately after being awarded this Contract and receiving a purchase order. Vendor shall deliver the Contract Items within 90 days upon contract award. Contract Items must be delivered to Agency at:

313 Gus R. Douglass Lane
Building 11
Charleston, WV, 25312

- 6.2 Late Delivery:** The Agency placing the order under this Contract must be notified in writing if the shipment of the Contract Items will be delayed for any reason. Any delay in delivery that could cause harm to an Agency will be grounds for cancellation of the Contract, and/or obtaining the Contract Items from a third party.

Any Agency seeking to obtain the Contract Items from a third party under this provision must first obtain approval of the Purchasing Division.

- 6.3 Delivery Payment/Risk of Loss:** Vendor shall deliver the Contract Items F.O.B. destination to the Agency's location.
- 6.4 Return of Unacceptable Items:** If the Agency deems the Contract Items to be unacceptable, the Contract Items shall be returned to Vendor at Vendor's expense and with no restocking charge. Vendor shall either make arrangements for the return within five (5) days of being notified that items are unacceptable, or permit the Agency to arrange for the return and reimburse Agency for delivery expenses. If the original packaging cannot be utilized for the return, Vendor will supply the Agency with appropriate return packaging upon request. All returns of unacceptable items shall be F.O.B. the Agency's location. The returned product shall either be replaced,

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

or the Agency shall receive a full credit or refund for the purchase price, at the Agency's discretion.

- 6.5 Return Due to Agency Error:** Items ordered in error by the Agency will be returned for credit within 30 days of receipt, F.O.B. Vendor's location. Vendor shall not charge a restocking fee if returned products are in a resalable condition. Items shall be deemed to be in a resalable condition if they are unused and in the original packaging. Any restocking fee for items not in a resalable condition shall be the lower of the Vendor's customary restocking fee or 5% of the total invoiced value of the returned items.

7. VENDOR DEFAULT:

- 7.1** The following shall be considered a vendor default under this Contract.

7.1.1 Failure to provide Contract Items in accordance with the requirements contained herein.

7.1.2 Failure to comply with other specifications and requirements contained herein.

7.1.3 Failure to comply with any laws, rules, and ordinances applicable to the Contract Services provided under this Contract.

7.1.4 Failure to remedy deficient performance upon request.

- 7.2** The following remedies shall be available to Agency upon default.

7.2.1 Immediate cancellation of the Contract.

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

7.2.3 Any other remedies available in law or equity.

REQUEST FOR QUOTATION
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

8. MISCELLANEOUS

8.1 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:	
Telephone Number:	
Fax Number:	
Email Address:	

Exhibit A - Pricing Page
MALDI TOF Biotyper sirius GP System and Support
CRFQ AGR25*03

Section Number	Description	Model #/Brand Name	Quantity	Unit Price	Extended Amount
3.1.1	MALDI-TOF Biotyper sirius GP System	MALDI Biotyper Sirius GP System	1		\$ 254,460.30 -
3.1.1.10	Training and Install		1		\$ 0.00 -
3.1.1.11	Warranty		1		\$ 0.00 -
3.1.1.2	Preventative Maintenance Service Year 1	Labscape Complete Service Yr. 1	1		\$ 24,415.00 -
3.1.1.2	Preventative Maintenance Service Year 2 (Optional Renewal)	Labscape Complete Service Yr. 2	1		\$ 24,415.00 -
3.1.1.2	Preventative Maintenance Service Year 3 (Optional Renewal)	Labscape Complete Service Yr.3	1		\$ 24,415.00 -
3.1.1.2	Preventative Maintenance Service Year 4 (Optional Renewal)	Labscape Complete Service Yr. 4	1		\$ 24,415.00 -
3.1.1.3	Additional Modules	MBT HT Subtyping Module, MBT Explorer Module	1		\$ 9,037.50 -
	Failure to use this form may result in disqualification		GRAND TOTAL		\$ 361,157.80 -
	Bidder / Vendor Information				
Name:	Bruker Scientific LLC				
Address:	40 Manning Road				
	Billerica, MA 01821				
Phone:	773-556-3673				
Email Address:	canlon.brue@bruker.com				
Authorized Signature:	<i>Canlon Brue</i>				



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
Laboratory

Proc Folder: 1434726

Doc Description: MALDI-TOF Biotyper Sirius GP System and Support

Reason for Modification:

To Post Addendum 01

Proc Type: Central Purchase Order

Date Issued	Solicitation Closes	Solicitation No	Version
2024-07-24	2024-07-30 13:30	CRFQ 1400 AGR2500000003	2

BID RECEIVING LOCATION

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

VENDOR

Vendor Customer Code:

Vendor Name :

Address :

Street :

City :

State :

Country :

Zip :

Principal Contact :

Vendor Contact Phone:

Extension:

FOR INFORMATION CONTACT THE BUYER

Larry D McDonnell
304-558-2063
larry.d.mcdonnell@wv.gov

Vendor
Signature X

FEIN#

DATE

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

SOLICITATION NUMBER: CRFQ AGR25*03
Addendum Number: 1

The purpose of this addendum is to modify the solicitation identified as ("Solicitation") to reflect the change(s) identified and described below.

Applicable Addendum Category:

- ☐ | Modify bid opening date and time
- ☐ | Modify specifications of product or service being sought
- ☒ | Attachment of vendor questions and responses
- ☐ | Attachment of pre-bid sign-in sheet
- ☐ | Correction of error
- ☐ | Other

Description of Modification to Solicitation:

To attach answers to vendor questions.

Bid opening date and time still remains July 30, 2024 at 1:30PM EST

No other changes

Additional Documentation: Documentation related to this Addendum (if any) has been included herewith as Attachment A and is specifically incorporated herein by reference.

Terms and Conditions:

1. All provisions of the Solicitation and other addenda not modified herein shall remain in full force and effect.
2. Vendor should acknowledge receipt of all addenda issued for this Solicitation by completing an Addendum Acknowledgment, a copy of which is included herewith. Failure to acknowledge addenda may result in bid disqualification. The addendum acknowledgement should be submitted with the bid to expedite document processing.

CRFQ AGR2500000003 - MALDI-TOF Biotyper Sirius GP System and Support

Vendor Questions and Answers

Q1. When completing **Exhibit A – Pricing Page** of the attached solicitation document, is it okay if I were to make name changes to the item descriptions listed? Some of the names of our items differ from what is listed.

Exhibit A - Pricing Page					
MALDI TOF Biotyper sirius GP System and Support					
CRFQ AGR25*03					
Section Number	Description	Model #/Brand Name	Quantity	Unit Price	Extended Amount
3.1.1	MALDI-TOF Biotyper sirius GP System		1		\$ -
3.1.1.10	Training and Install		1		\$ -
3.1.1.11	Warranty		1		\$ -
3.1.1.2	Preventative Maintenance Service Year 1		1		\$ -
3.1.1.2	Preventative Maintenance Service Year 2 (Optional Renewal)		1		\$ -
3.1.1.2	Preventative Maintenance Service Year 3 (Optional Renewal)		1		\$ -
3.1.1.2	Preventative Maintenance Service Year 4 (Optional Renewal)		1		\$ -
3.1.1.3	Additional Modules		1		\$ -
	Failure to use this form may result in disqualification			GRAND TOTAL	\$ -
	Bidder / Vendor Information				
Name:	Bruker Scientific LLC				
Address:	40 Manning Road				
	Billerica, MA 01821				
Phone:	773-556-3673				
Email Address:	cankon.bruer@bruker.com				
Authorized Signature:					

For example, for each preventative maintenance line item, I assume this is requesting 4 individual years of service coverage? Our service coverage is called LabScape Complete and includes preventative maintenance in the service coverage.

A1. Please use the 'Model # / Brand Name' field to list specific names of products and services provided by your company if they differ from the listed description. The description column of the pricing page should not be modified.

ADDENDUM ACKNOWLEDGEMENT FORM
SOLICITATION NO.: CRFQ AGR25*03

Instructions: Please acknowledge receipt of all addenda issued with this solicitation by completing this addendum acknowledgment form. Check the box next to each addendum received and sign below. Failure to acknowledge addenda may result in bid disqualification.

Acknowledgment: I hereby acknowledge receipt of the following addenda and have made the necessary revisions to my proposal, plans and/or specification, etc.

Addendum Numbers Received:

(Check the box next to each addendum received)

<input type="checkbox"/> Addendum No. 1	<input type="checkbox"/> Addendum No. 6
<input type="checkbox"/> Addendum No. 2	<input type="checkbox"/> Addendum No. 7
<input type="checkbox"/> Addendum No. 3	<input type="checkbox"/> Addendum No. 8
<input type="checkbox"/> Addendum No. 4	<input type="checkbox"/> Addendum No. 9
<input type="checkbox"/> Addendum No. 5	<input type="checkbox"/> Addendum No. 10

I understand that failure to confirm the receipt of addenda may be cause for rejection of this bid. I further understand that any verbal representation made or assumed to be made during any oral discussion held between Vendor's representatives and any state personnel is not binding. Only the information issued in writing and added to the specifications by an official addendum is binding.

Company

Authorized Signature

Date

NOTE: This addendum acknowledgment should be submitted with the bid to expedite document processing.
Revised 6/8/2012

**STATE OF WEST VIRGINIA
ADDENDUM TO VENDOR'S STANDARD CONTRACTUAL FORMS**

State Agency, Board, or Commission (the "State"): *WV Department of Agriculture*
Vendor: *Drucker Scientific LLC*
Contract/Lease Number ("Contract"): *CRFO AAR25403*
Commodity/Service: *Maldi-TOF Biotyper Sirius GP System and Support*

The State and the Vendor are entering into the Contract identified above. The Vendor desires to incorporate one or more forms it created into the Contract. Vendor's form(s), however, include(s) one or more contractual terms and conditions that the State cannot or will not accept. In consideration for the State's incorporating Vendor's form(s) into the Contract, the Vendor enters into this Addendum which specifically eliminates or alters the legal enforceability of certain terms and conditions contained in Vendor's form(s). Therefore, on the date shown below each signature line, the parties agree to the following contractual terms and conditions in this Addendum are dominate over any competing terms made a part of the Contract:

1. **ORDER OF PRECEDENCE:** This Addendum modifies and supersedes anything contained on Vendor's form(s) whether or not they are submitted before or after the signing of this Addendum. **IN THE EVENT OF ANY CONFLICT BETWEEN VENDOR'S FORM(S) AND THIS ADDENDUM, THIS ADDENDUM SHALL CONTROL.**

2. **PAYMENT** – 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 licenses, subscriptions, or maintenance may be paid annually in advance.

Any language imposing any interest or charges due to late payment is deleted.

3. **FISCAL YEAR FUNDING** – Performance of this Contract is contingent upon funds being appropriated by the WV Legislature or otherwise being available for this Contract. In the event funds are not appropriated or otherwise available, the Contract becomes of no effect and is null and void after June 30 of the current fiscal year. 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.

4. **RIGHT TO TERMINATE** – The State reserves the right to terminate this Contract upon thirty (30) days written notice to the Vendor. If this right is exercised, the State agrees to pay the Vendor only for all undisputed services rendered or goods received before the termination's effective date. All provisions are deleted that seek to require the State to (1) compensate Vendor, in whole or in part, for lost profit, (2) pay a termination fee, or (3) pay liquidated damages if the Contract is terminated early.

Any language seeking to accelerate payments in the event of Contract termination, default, or non-funding is hereby deleted.

5. **DISPUTES** – Any language binding the State to any arbitration or to the decision of any arbitration board, commission, panel or other entity is deleted; as is any requirement to waive a jury trial.

Any language requiring or permitting disputes under this Contract to be resolved in the courts of any state other than the State of West Virginia is deleted. All legal actions for damages brought by Vendor against the State shall be brought in the West Virginia Claims Commission. Other causes of action must be brought in the West Virginia court authorized by statute to exercise jurisdiction over it.

Any language requiring the State to agree to, or be subject to, any form of equitable relief not authorized by the Constitution or laws of State of West Virginia is deleted.

6. **FEES OR COSTS:** Any language obligating the State to pay costs of collection, court costs, or attorney's fees, unless ordered by a court of competent jurisdiction is deleted.
7. **GOVERNING LAW** – Any language requiring the application of the law of any state other than the State of West Virginia in interpreting or enforcing the Contract is deleted. The Contract shall be governed by the laws of the State of West Virginia.
8. **RISK SHIFTING** – Any provision requiring the State to bear the costs of all or a majority of business/legal risks associated with this Contract, to indemnify the Vendor, or hold the Vendor or a third party harmless for any act or omission is hereby deleted.
9. **LIMITING LIABILITY** – Any language limiting the Vendor's liability for direct damages to person or property is deleted.
10. **TAXES** – Any provisions requiring the State to pay Federal, State or local taxes or file tax returns or reports on behalf of Vendor are deleted. The State will, upon request, provide a tax exempt certificate to confirm its tax exempt status.
11. **NO WAIVER** – Any provision requiring the State to waive any rights, claims or defenses is hereby deleted.

12. **STATUTE OF LIMITATIONS** – Any clauses limiting the time in which the State may bring suit against the Vendor or any other third party are deleted.
13. **ASSIGNMENT** – The Vendor agrees not to assign the Contract to any person or entity without the State's prior written consent, which will not be unreasonably delayed or denied. The State reserves the right to assign this Contract to another State agency, board or commission upon thirty (30) days written notice to the Vendor. These restrictions do not apply to the payments made by the State. Any assignment will not become effective and binding upon the State until the State is notified of the assignment, and the State and Vendor execute a change order to the Contract.
14. **RENEWAL** – Any language that seeks to automatically renew, modify, or extend the Contract beyond the initial term or automatically continue the Contract period from term to term is deleted. The Contract may be renewed or continued only upon mutual written agreement of the Parties.
15. **INSURANCE** – Any provision requiring the State to maintain any type of insurance for either its or the Vendor's benefit is deleted.
16. **RIGHT TO REPOSSESSION NOTICE** – Any provision for repossession of equipment without notice is hereby deleted. However, the State does recognize a right of repossession with notice.
17. **DELIVERY** – All deliveries under the Contract will be FOB destination unless the State expressly and knowingly agrees otherwise. Any contrary delivery terms are hereby deleted.
18. **CONFIDENTIALITY** – Any provisions regarding confidential treatment or non-disclosure of the terms and conditions of the Contract are hereby deleted. State contracts are public records under the West Virginia Freedom of Information Act ("FOIA") (W. Va. Code §29B-a-1, et seq.) and public procurement laws. This Contract and other public records may be disclosed without notice to the vendor at the State's sole discretion.
- Any provisions regarding confidentiality or non-disclosure related to contract performance are only effective to the extent they are consistent with FOIA and incorporated into the Contract through a separately approved and signed non-disclosure agreement.
19. **THIRD-PARTY SOFTWARE** – If this Contract contemplates or requires the use of third-party software, the vendor represents that none of the mandatory click-through, unsigned, or web-linked terms and conditions presented or required before using such third-party software conflict with any term of this Addendum or that it has the authority to modify such third-party software's terms and conditions to be subordinate to this Addendum. The Vendor shall indemnify and defend the State against all claims resulting from an assertion that such third-party terms and conditions are not in accord with, or subordinate to, this Addendum.
20. **AMENDMENTS** – The parties agree that all amendments, modifications, alterations or changes to the Contract shall be by mutual agreement, in writing, and signed by both parties. Any language to the contrary is deleted.

Notwithstanding the foregoing, this Addendum can only be amended by (1) identifying the alterations to this form by using *Italics* to identify language being added and ~~strikes through~~ for language being deleted (do not use track-changes) and (2) having the Office of the West Virginia Attorney General's authorized representative expressly agree to and knowingly approve those alterations.

State: West Virginia Dept of Ag

By: 

Printed Name: Joseph L Hatton

Title: Deputy Commissioner

Date: Oct 18, 2024

Vendor: Brucker Scientific LLC

DocuSigned by:



Printed Name: Carla Schneider

Title: Director, Commercial Operations

Date: 10/16/24



West Virginia Dept of Agriculture
313 Gus R. Douglass Lane
Bldg 11
Charleston, West Virginia, 25312
United States

Bruker Scientific, LLC
40 Manning Road
Billerica, MA 01821
USA

Tel. +1 (978) 663-3660
Fax. +1 (978) 667-5993

MALDI Biotyper Sirius GP System & Service Quote

MALDI Biotyper Sirius GP System & Service Quote

Quote No.: Q-69581-1
Our Contact: Canlon Bruer
Quote Date: 7/26/2024

Prepared By:
Canlon Bruer
canlon.bruer@bruker.com
Send Order to: Sales Representative

Ship To
West Virginia Dept of Agriculture
313 Gus R. Douglass Lane
Bldg 11
Charleston, West Virginia, 25312
United States

Quote includes 6 years of service to begin after expiration of the 1 year warranty period. A multi-year discount is only valid if the purchase order total is as listed on the quote. However, Bruker does allow for annual billing. Payable within 30 days net after receipt of the invoice.

System

#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
1	1890121	Sales Configuration-MBT sirius GP	307,000.00	58,566.75	248,433.25	1	248,433.25

Order Number 1890121 Sales Configuration-MBT sirius GP This sales configuration describes the scope of delivery of a MALDI Biotyper® sirius GP System.
Following products are included in a delivery:

#1890122 MALDI Biotyper® sirius GP System (General Purpose):

MALDI Biotyper sirius is a benchtop MALDI-Time-Of-Flight Mass Spectrometer for accurate mass determination of bio-molecules. Includes gridless microSCOUT™ MALDI ion source with extended pulsed ion extraction PAN™ mass range focusing; integrated source cleaning without the need of venting the system; 200 Hz BRUKER smartbeam™ solid-state lifetime** laser; TOF analyzer for linear-only measurements with positive or negative acceleration potential.



#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
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**Lifetime means: 500 Million laser shots or seven years after acceptance (whatever comes first)

Not for use in diagnostic procedures

1885983 Computer System MBT sirius/Win10 Includes a data system with digitizer, WIN10 Operating System, LCD-display, Keyboard, Mouse, bar code scanner with holder and an Acronis True Image DVD including one license.

1885985 Cable set Computer/MBT sirius Interfacing the computer system with the Bruker mass spectrometer.

1847032 MBT ShuttleThe MBT Shuttle target holder is used to securely hold MSP steel MALDI target plates or MBT Biotargets during the sample preparation process. The secure grip and ergonomic form make sample preparation easier. Three mounting positions are provided for reagent containers.

1840375 MBT Biotarget 96 Disposable target plate for MALDI Biotyper workflow to enable microorganism detection and identification. Allows to prepare 96 samples on each target plate. Quantity of 20 target plates in one box.

8267615 MSP adapter for MALDI Biotarget (2 pieces) Adapter enables the use of MALDI Biotarget in a Bruker mass spectrometer.

8280800 MSP 96 target polished steel BC Reusable steel target plate with 96 sample positions.

8242974 Prepared MSP-Target Required for installation.

8255344 Bruker Matrix HCCA, portioned Purified matrix substance for MALDI-TOF-MS.
alpha-Cyano-4-hydroxycinnamic acid C₁₀H₇NO₃ M 189.17 - CAS 28166-41-8 Content: 10 tubes at 2.5 mg HCCA To be stored at 2-8°C (35-46°F)

Not for use in diagnostic procedures.

8255343 Bruker Bacterial Test Standard, 5 Tubes Mass calibration standard showing a typical Escherichia coli DH5 alpha peptide and protein profile plus additional proteins in MALDI-TOF MS.

Content: 5 tubes, each tube sufficient for approximately 40 MALDI target plate spots.

To be stored at -18°C or below.

Not for use in diagnostic procedures.

Additionally, a MALDI Biotyper general purpose specific software including reference library that comprises spectra of thousands of strains, a system installation, a familiarization upon installation, 1-year warranty, and two days on-site MALDI Biotyper application training are included.

2	DAL00909	Application training 2 days onsite	10,500.00	10,500.00	0.00	1	0.00
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Application training course takes place at customer site.

To be redeemed within one year after purchase.

3	1868405	MBT Compass HT Industry	58,000.00	58,000.00	0.00	1	0.00
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#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
		<p># 1868405: Software-Package MBT Compass HT Industry The MALDI Biotyper Compass software is a bioinformatics package for microorganism identification and classification based on MALDI-TOF MS profile spectra.</p> <p>The MALDI Biotyper software performs the data processing from raw spectra to peak lists. Generation of reference spectra for individual strains can be automated (requires additional # 1828476 MBT Explorer). Microorganism identification is performed by pattern matching between reference spectra and new, unknown MALDI-TOF profiles.</p> <p>Incl. one license each for MALDI Biotyper Server and Client.</p> <p>"For research use only. Not for use in clinical diagnostic procedures"</p>					
4	1889527	MBT HT Subtyping Module	10,200.00	1,162.50	9,037.50	1	9,037.50
		<p># 1889527 MBT HT Subtyping Module:</p> <p>The MBT HT Subtyping Module enables the automated detection of specific peak patterns which allow a differentiation below species level for B. fragilis, S. aureus and KPC-producing Enterobacteriaceae. In addition, the module allows differentiation of closely related Listeria species, Elisabethkingia species and of the Mycobacterium chimaera/M. intracellulare complex.</p> <p>Contains one license for the MBT HT Subtyping module.</p> <p>MBT Compass HT is a prerequisite for installing this module.</p> <p>For Research Use Only. Not for use in clinical diagnostic procedures.</p> <p>Please contact your local representative for availability in your country.</p>					
5	1843241	MBT Compass	56,300.00	56,300.00	0.00	1	0.00
		<p>The MBT Compass is a dedicated software package for microorganism identification based on MALDI-TOF MS profile spectra. MBT Compass software controls mass spectrometry data acquisition and, for identification purposes, matches acquired spectra against the MBT Compass library (# 1829023, to be ordered separately). The software generates an easily understandable report using score values and scoring symbols.</p> <p>Incl. one MBT Compass license and one MBT Satellite Module license.</p> <p>The software is prepared for the usage of the MBT Subtyping-Module, MBT Filamentous Fungi Module, and MBT Mycobacteria-Module (licenses to be ordered separately).</p> <p>"For research use only. Not for use in diagnostic procedures"</p>					
6	1828476	MBT Explorer Module	22,700.00	22,700.00	0.00	1	0.00
		<p>The MBT Explorer Module allows sophisticated statistical analysis as well as the extension of existing libraries or the creation of new libraries.</p> <p>Statistical analysis is supported by PCA (Principal Component Analysis), Clustering (dendrogram creation and examination) and correlation analysis based on a composite correlation index (CCI) matrix approach. The module allows a detailed comparison of measured spectra with the archived library spectra.</p> <p>To use the module effectively, we recommend participation in the Advanced Operator training course (C1AC21, C1AC72).</p>					



#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
"For research use only. Not for use in diagnostic procedures"							
7	8605553	UPS POWERVAR ABCE602-11 120VAC	1,330.00	0.00	1,330.00	1	1,330.00
Uninterruptible Power Supply UPS for MALDI Biotyper Systems using 115 Volt input voltage. Not for usage in 230 V countries.							
8	1902007	Printer Laser BRUKER Standard 115V color	955.00	107.95	847.05	1	847.05
9	DAL05055	Freight costs systems (continental)	3,850.00	0.00	3,850.00	1	3,850.00
System Total:							USD 263,497.80

Service

#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
10	DAL00279	LabScope Complete MALDI Biotyper	25,700.00	1,285.00	24,415.00	1	24,415.00
Bruker LabScope Complete Maintenance Service Agreement is a maintenance service agreement, which provides complete service coverage. A detailed overview of the services covered can be found in the attached product description.							
Coverage year 2025 - 2026.							
11	DAL00279	LabScope Complete MALDI Biotyper	25,700.00	1,285.00	24,415.00	1	24,415.00
Bruker LabScope Complete Maintenance Service Agreement is a maintenance service agreement, which provides complete service coverage. A detailed overview of the services covered can be found in the attached product description.							
Coverage year 2026 - 2027.							
12	DAL00279	LabScope Complete MALDI Biotyper	25,700.00	1,285.00	24,415.00	1	24,415.00
Bruker LabScope Complete Maintenance Service Agreement is a maintenance service agreement, which provides complete service coverage. A detailed overview of the services covered can be found in the attached product description.							
Coverage year 2027 - 2028.							
13	DAL00279	LabScope Complete MALDI Biotyper	25,700.00	1,285.00	24,415.00	1	24,415.00
Bruker LabScope Complete Maintenance Service Agreement is a maintenance service agreement, which provides complete service coverage. A detailed overview of the services covered can be found in the attached product description.							



#	Part No.	Description	Unit List Price	Discount	Unit Net Price	Qty	Extended Price
		Coverage year 2028 - 2029.					

Service Total: USD 97,660.00

List Price: USD 505,135.00

Total Discount: USD 143,977.20

Net Price: USD 361,157.80



TERMS AND CONDITIONS

Delivery

Approx. Lead Time (weeks):	8
Lead Time starts after:	
Freight Terms (Incoterms 2020):	DPU (Delivery At Place Unloaded)
Freight Point:	Bremen

We reserve the right to make partial deliveries and acceptance if stand-alone systems are sold as part of package sales.

COVID-19 Regulations

Apart from, and beyond any other regulations in this offer regarding liability, we are not liable for any impossibility or delay(s) of deliveries or other performance to the extent they are due to, or related to the COVID-19 (Coronavirus SARS-CoV-2) epidemic. For the sake of clarity: the aforementioned instance constitutes an event of force majeure to the extent it causes an impossibility or delay, which then relieves us, at least temporarily, of our obligation to deliver/perform and our respective liability. If we become aware of such an occurrence, we will inform the customer without undue delay. Our delivery/performance deadlines or dates will be automatically extended/postponed by the duration of the occurrence, plus a reasonable start-up period after the end of the occurrence. If the occurrence makes it substantially more difficult or impossible for us to provide the delivery/performance and is not only of temporary duration, we are entitled to cancel the contract.

Terms of Payment

70% upon order, Upon Invoice
30% upon shipment, Upon Invoice

Prices

All prices do not include VAT, taxes, or import duty which are the responsibility of the customer.

Installation

Installation and familiarization are included.

Training

Training courses are provided at Bruker facilities. Onsite trainings are available but only provided if explicitly mentioned in the quotation and ordered.

General Terms and Conditions

This quote is subject to our attached General Terms and Conditions.

Compliance with Laws

The Buyer understands that export and re-export of Bruker products and any related parts, components, spare parts, consumables, accessories, software, technical data, service, or technical assistance (individually, an "Item" and, collectively, the "Items") are subject to U.S., the EU and other foreign trade controls, customs and economic sanctions laws, regulations, rules and orders (collectively, "Export Control Laws"). In addition to any other remedy it may have, Bruker, in its sole discretion, may suspend and/or cancel the export, transfer, delivery, provision, installation, and/or any maintenance, repair, replacement, or service of any Item without any liability whatsoever to Bruker or its affiliates, if (a) Bruker has not received all export-related documentation requested by Bruker, including end-user certificates, (b) Bruker has not received the governmental approvals



that Bruker deems to be required, or (c) Bruker believes that such activity may violate any Export Control Laws or Bruker's own compliance policies. The Buyer shall only use the Items for non-military, peaceful purposes.

Terms and Conditions (Payment Method)

The Parties agree that all payments due and owing under this Agreement shall be made directly to the Seller through automated clearing house ("ACH") transfers, unless otherwise agreed upon by both Parties in writing.

With best regards,
Bruker Scientific, LLC

A handwritten signature in black ink that reads "Carlton Bruer". The signature is written in a cursive, flowing style.

Authorized signature

Bruker Scientific LLC Terms and Conditions of Sale – Products and Services (USA)

1. GENERAL. This quotation (the "Quotation") issued by, and orders accepted by, Bruker Scientific LLC ("Seller") for purchase by the buyer specified in the Quotation ("Buyer") of the products and services listed therein ("Products" and "Services") shall be subject to and governed by these Terms and Conditions. Any terms contained or referenced in Buyer's purchase order or other document issued by Buyer shall be non-binding and of no effect. The Quotation and these Terms and Conditions together represent a binding agreement between Buyer and Seller (collectively, the "Order").

2. SHIPMENT, RESCHEDULING AND CANCELLATION. Shipping and delivery dates in the Quotation are estimates only. Seller shall attempt to comply with, but will not guarantee, shipping dates and loading and routing instructions. Seller reserves the right to allow or prorate shipments against all orders whenever, in its judgment, an oversold condition exists as to any particular Product. In the event of a breach by Buyer of the Order, Seller may decline to make further shipments without waiving any of its rights. If, despite such breach, Seller elects to continue to make shipment, such action shall not constitute a waiver regarding, or otherwise diminish, Seller's legal rights or remedies with respect to Buyer breach. This Order may not be cancelled or rescheduled.

3. TITLE AND DELIVERY. Unless otherwise set forth in the Quotation, all Products will be shipped EXW factory (Incoterms 2020), and Buyer shall pay all freight, duties, cartage and handling. Except in relation to software as described in Section 4 below, title and risk of loss or damage of Products shall pass from Seller to Buyer in accordance with such shipping terms. All claims by Buyer for damages to Products must be filed with the carrier.

4. SOFTWARE. Buyer agrees that software provided by Seller under an Order is licensed, not sold, by Seller to Buyer. Seller retains all ownership, title, and interest in the software. Seller grants to Buyer a paid-up, non-exclusive, non-transferable license to use the software in combination with the Products purchased hereunder, or on a standalone basis if so permitted in the Quotation. Buyer agrees to maintain confidentiality of such software and shall not transfer, assign, sublicense, license, or otherwise make such software available to any third party, copy, modify, reverse-engineer, decompile, or create derivative works of such software. The software license shall terminate when the license term as set forth in the Quotation terminates or when Buyer's ownership of the equipment on which the software is installed terminates, as applicable, unless earlier terminated as set forth below. Upon termination of the software license, Buyer shall cease use of (and destroy, or return to Seller as applicable) all software and related documentation..

5. SERVICES. Delivery, performance and completion of Services by Seller are dependent on Buyer's assistance, participation and involvement. In order for Seller to meet any Services performance or completion dates specified in the Quotation, Buyer must in a timely manner provide to Seller all documents, information and materials, and access to Buyer personnel and facilities that are applicable to the Order. Any delivery or completion times or dates which Seller has indicated for the Services are only approximate. Services shall be deemed accepted as completed.

Buyer shall ensure that Seller's performance of Services can start immediately upon arrival of Seller's representatives at Buyer's facilities. Buyer shall assist Seller's representatives and provide technical assistance as requested by Seller. In particular, Buyer shall provide the required qualified personnel who shall cooperate with and follow the instructions of Seller's representatives. Except to the extent the Quotation specifies that Seller will provide certain supplies for performance of the Services, Buyer shall provide all necessary equipment and tools (e.g., lifting appliances), commodities, materials, substances, water, gas, heating, electric power, air conditioning, operating power, and required connections. Buyer is responsible for performing all backups of Buyer data prior to the start of the performance of Services. Buyer shall dispose of all materials (e.g., packaging) and waste resulting from the provision of the Services at Buyer's expense. If Buyer fails to fulfill its obligations as set forth in this Section 5, Seller shall be entitled to delay commencement or performance of the Services until such obligations are fulfilled, or Seller can elect to undertake Buyer's obligations at Buyer's expense. However, Seller shall not be obligated to do so.

In addition to the above, Buyer shall inform Seller of any safety, health and environmental risks and regulations applicable to Buyer's site where the Services will be performed. Buyer shall comply with all applicable laws, legislation, regulations and ordinances in connection with the use and handling of the Services, including, but not limited to, pharmaceutical, cosmetic and food preparation, electrical or electronic waste and introduction or production and use of chemical substances. Buyer shall maintain in effect all licenses, permissions, authorizations, consents and permits applicable to Buyer's facility and the performance and use of the Services.

Seller shall not be liable for any delays in the provision or completion of Services in the event and to the extent such delay results from acts or omissions of Buyer; an unusually long processing time for any necessary permit, license or other authorization required to be obtained from a governmental authority; or factors beyond Seller's reasonable control. To the extent the Quotation requires Seller to obtain applicable licenses and permits, Seller is only responsible for ensuring that

Bruker Scientific LLC Terms and Conditions of Sale – Products and Services (USA)

Seller submits the relevant applications to the applicable authority in a timely manner and regularly monitors such applications. Buyer shall provide Seller with reasonably requested assistance in such licensing and permitting process.

6. INTELLECTUAL PROPERTY; CONFIDENTIAL INFORMATION. Nothing in these Terms and Conditions shall be deemed to transfer any intellectual property rights from Buyer to Seller and vice versa. Each party shall retain all rights, title and interest in its own intellectual property and all modifications, updates, upgrades, enhancements and derivatives thereof. Seller will not develop any intellectual property or create works for hire for Buyer. Seller retains ownership of all rights, interest and title to intellectual property in all manuals, illustrations, drawings, designs, specifications, and other documentation provided by Seller to Buyer. All of such information and materials, as well as Seller's pricing, quotes and proposals, are the confidential information of Seller and shall not be disclosed by Buyer to any third party or used by Buyer for any purpose other than in connection with operation of the Products and use of the Services.

7. PRICES. Fees owed by Buyer for the Products and Services are specified on the Quotation. Such fees do not include anything not expressly listed in the Quotation, including without limitation installation of utilities required for Products. Fees in the Quotation apply solely to this Order and only if Buyer purchases before the end of the Quotation validity period. Seller is entitled to change the prices for Products and Services as stated in its price list at any time at Seller's own discretion.

8. PAYMENT TERMS.

(a) Unless otherwise set forth in a Quotation, payment terms are net thirty (30) days from the date of the invoice. Payments shall be made in U.S. Dollars unless the Quotation states otherwise. Any currency exchange charges, any charges for nonpar clearance of checks or collection charges (including reasonable attorneys' fees), and fees imposed by Buyer's bank or due to Buyer's payment mechanism will be paid by Buyer. Any amounts not paid when due will bear interest at a rate of 18% per annum or, if lower, the maximum rate permissible by applicable law. Buyer shall be responsible for and reimburse Seller for any costs and expenses incurred by Seller to collect past due amounts owed by Buyer. Seller may immediately suspend or terminate an Order if Buyer fails to issue payment in full by the due date.

(b) The Order is subject to credit approval by Seller. The amount of any credit extended by Seller to Buyer may be changed at any time by Seller, and such credit may be withdrawn by Seller. With respect to an Order on which credit is not extended by Seller or, if extended, is subsequently withdrawn, shipment or delivery shall be made, at Seller's election, cash with order (in whole or in part), C.O.D., letter of credit or Sight Draft attached to Bill of Lading or other shipping documents, with all costs of collection (plus 18% interest on Sight Drafts not paid at maturity) for the account of Buyer. If, in the judgment of Seller, the financial condition of Buyer does not justify continuation of production or shipment on the terms of payment originally specified, Seller may require full or partial payment in advance. In the event any proceeding is brought by or against Buyer under any bankruptcy or insolvency laws, Seller shall be entitled, in addition to any other remedies at law or in equity, to (i) stop or divert any shipment in transit, (ii) cancel any order then outstanding and/or (iii) receive reimbursement for its cancellation charges.

(c) Each shipment shall be considered a separate independent transaction, and payment therefor shall be made accordingly, unless otherwise set forth in the Quotation. If for any reason Buyer is not prepared to accept delivery of Product(s), Seller may store the Product(s) at Buyer's expense and risk in the name of Buyer, and such storage shall constitute shipment and delivery to Buyer.

9. TAXES. Prices do not include federal, state or local excise, sales, use, value added or similar taxes. Accordingly, in addition to the prices specified on the Quotation, the amount of any applicable taxes will appear as separate items on the invoice and will be paid by Buyer unless prior to shipment Seller receives an appropriate tax exemption certificate from Buyer.

10. ACCEPTANCE. Except as provided in the Quotation, Seller's standard commercial factory acceptance test(s) performed at Seller's factory will comprise acceptance for any Product sold by Seller, and no other acceptance procedures or criteria will apply. If the Quotation references customer specific acceptance ("CSA") provisions, then Buyer will accept the purchased Product in accordance with such CSA provisions. The parties will give priority to achieving CSA and the purchased Product shall not be used by Buyer for material production, for development of new processes or for any purposes other than achieving CSA, prior to successful completion or waiver of the CSA provisions. Any such use of the Product prior to successful completion of the CSA provisions shall be deemed to constitute CSA by Buyer. It is the responsibility of the Buyer to ensure that all the required facilities are ready and site preparation is completed for successful commencement of CSA on delivery of the Product. If CSA has not been commenced within thirty (30) days after delivery of the Product and completed within sixty (60) days after delivery (through no fault of Seller), the Product shall be deemed accepted as having achieved CSA. Services shall be deemed accepted when completed, which in the case of some Services will be reflected in the execution of a Service report by Buyer.

Bruker Scientific LLC Terms and Conditions of Sale – Products and Services (USA)

11. FORCE MAJEURE. Seller shall not be liable for failure to perform this Order or any aspects thereof where occasioned by strikes, lockouts, labor difficulties, riots, inability or difficulty in obtaining or procuring supplies, labor or transportation, fires, storms, floods, epidemics, pandemics, earthquakes, explosions, accidents, acts of God, interference by civil or military authorities, whether legal or de facto, acts of the public enemy, war, rebellion, insurrection, sabotage, embargoes, orders given priority by any public authority or any other cause beyond the reasonable control of Seller.

12. INDEMNIFICATION. In the event of any action (and all prior related claims) brought against Buyer by a third party based on a claim that any Products provided by Seller to Buyer under the Order infringe any valid U.S. patent, copyright or trade secret, Seller shall defend such action at Seller's expense and pay all costs and damages finally awarded in such action or settlement which are attributable to such claim. Notwithstanding anything to the contrary contained herein, Seller shall not have any liability to Buyer to the extent that any infringement or claim thereof is based upon (i) use of a Product in combination with equipment or software not supplied by Seller, (ii) compliance with Buyer's designs, specifications or instructions, (iii) use of a Product in an application or environment for which it was not designed or (iv) modifications of a Product by anyone other than Seller without Seller's prior written approval. In the event of actual or potential infringement by the Product, Seller may, at its discretion and its own expense, (a) procure for Buyer the right, at no additional expense to Buyer, to continue using the Product; (b) replace or modify the Product so that it becomes non-infringing, provided the modification or replacement does not materially adversely affect the specifications of the Product; or (c) in the event (a) and (b) are not practical as determined by Seller, refund to Buyer the amortized amounts paid by Buyer with respect thereto, based on a five (5) year amortization schedule. **THE FOREGOING INDEMNIFICATION PROVISION STATES SELLER'S ENTIRE LIABILITY AND BUYER'S SOLE REMEDY WITH RESPECT TO INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.** In addition to the foregoing intellectual property infringement indemnity, Seller shall at its cost defend and hold harmless Buyer against all third party bodily injury, death and tangible property damage claims, made against Buyer to the extent caused by the negligence or willful misconduct of Seller in the delivery of this Order and will pay all costs and damages (including reasonable attorneys' fees) finally awarded or settled in such claim. With respect to the claims described above in this Section 12, Buyer shall provide prompt written notice to Seller of any such claims. Seller shall have the right to assume sole control of the defense of any such claims and all negotiations for their settlement or compromise and. Buyer shall cooperate fully with Seller in the defense, settlement or compromise of same.

13. ASSIGNMENT. Buyer shall not assign this Order or any portion thereof without the prior signed written consent of Seller.

14. LIMITED WARRANTY AND DISCLAIMER. In lieu of any other warranty, Seller warrants that (i) the Products will operate substantially in conformance with Seller's published specifications as set forth in Seller's standard published Product documentation, specifications or inserts ("Documentation") and be free from defects in material and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for the period of time set forth in the Documentation, and (ii) Seller shall retain qualified personnel to perform the Services in a professional and workmanlike manner. If a period of time is not specified in the Documentation, the warranty period shall be one (1) year from the date of shipment to Buyer for equipment; ninety (90) days from the date of shipment for spare parts and software; and ninety (90) days from the date of delivery for Services (the "Warranty Period"). If notified by Buyer in writing during the Warranty Period of a Product or Services warranty claim, Seller shall (i) repair or replace, at Seller's option, defective Products so as to cause the same to operate in substantial conformance with the Documentation and/or (ii) re-perform Services such that they comply with the limited warranty set forth herein. **THE OBLIGATIONS CREATED BY THIS WARRANTY STATEMENT TO REPAIR OR REPLACE DEFECTIVE PRODUCTS, SPARE PARTS, SOFTWARE AND/OR REPERFORM SERVICES SHALL BE THE SOLE REMEDY OF BUYER IN THE EVENT OF DEFECTIVE PRODUCTS, SPARE PARTS, SOFTWARE OR SERVICES THAT FAIL TO COMPLY WITH THE LIMITED WARRANTY SET FORTH HEREIN. EXCEPT AS EXPRESSLY PROVIDED IN THIS WARRANTY STATEMENT, SELLER DISCLAIMS ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, SPARE PARTS, SOFTWARE AND SERVICES, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT. WARRANTIES EXTEND ONLY TO THE ORIGINAL PURCHASER AND ARE NOT ASSIGNABLE OR OTHERWISE TRANSFERABLE. ANY ASSIGNMENT OR TRANSFER BY BUYER SHALL BE NULL AND VOID.** In no event shall Seller have any obligation to make repairs, replacements or corrections required, in whole or in part, as the result of (i) normal wear and tear, (ii) accident, disaster or event outside of Seller's control, such as a force majeure event, (iii) misuse, fault or negligence of or by Buyer, (iv) use of the Products in a manner for which they were not designed or intended based on the Documentation, (v) causes external to the Products such as, but not limited to, power failure or electrical power surges, (vi) improper operation, maintenance, storage, moving, relocation, alteration and handling of the Products, or (vii) use of Products in combination with equipment or software not supplied by Seller. Any installation, maintenance, repair, service, relocation or alteration to or of, or other tampering with, the Products or Software performed by any person or entity other than Seller without Seller's prior written approval, or any use

Bruker Scientific LLC Terms and Conditions of Sale – Products and Services (USA)

of replacement parts not supplied by Seller, shall immediately void and cancel all warranties with respect to the affected Products. In addition, the following items are excluded from the above warranty, are not warranted, and are provided as is, where is, without any warranty, express and implied: expendable or consumable items, including, but not limited to, filters, lamps, pilot lights, filaments, fuses, mechanical pump belts, probes, V-belts, wafer transport belts, pump fluids, O-rings and seals; used equipment, including demo equipment regular maintenance; and standalone computer and data storage equipment not manufactured by Seller (such as computers, monitors, printers and printer buffers) and any other third party products (which will carry only the original manufacturer warranty).

These warranties may not be extended or altered on Seller's behalf without the prior signed written authorization of Seller.

15. NO CONSEQUENTIAL DAMAGES; LIMITATION OF LIABILITY. IN LIEU OF ANY OTHER PROVISION TO THE CONTRARY, THE PARTIES AGREE THAT (i) THE TOTAL AGGREGATE LIABILITY OF SELLER UNDER OR IN RELATION TO THIS ORDER, REGARDLESS OF THE BASIS OF THE CLAIM, SHALL NOT EXCEED AN AMOUNT EQUAL TO THE TOTAL PURCHASE PRICE PAID BY BUYER TO SELLER DURING THE PRECEDING TWELVE (12) MONTH PERIOD UNDER THE APPLICABLE QUOTATION FOR THE PRODUCTS OR SERVICES GIVING RISE TO SUCH LIABILITY, AND (ii) SELLER WILL NOT BE LIABLE FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF USE OF FACILITIES OR EQUIPMENT, LOSS OF REVENUE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF GOODWILL OR OTHERWISE), REGARDLESS OF (A) WHETHER OR NOT THE SELLER HAS BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES, (B) WHETHER SUCH DAMAGES WERE FORESEEABLE, AND (C) THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

16. NONSOLICITATION. During the term of performance of Services and for a period of one (1) year thereafter, Buyer will not solicit, engage or hire, directly or indirectly, any employee of Seller who provides Services to Buyer. The foregoing restriction does not prevent Buyer from hiring an employee of Seller who has responded to a general advertisement for employment issued by Buyer that does not target such employee.

17. COMPLIANCE WITH LAWS; EXPORT CONTROL.

Buyer and Seller will comply with all laws and regulations applicable to their performance of this Order.

(a) Export Control. Buyer understands that exports and re-exports of Products and any related software, service, technical assistance, training and related technical data, and any media in which any of the foregoing is contained (the "Items") are subject to U.S. and foreign trade controls, customs, anti-boycott and economic sanctions laws, regulations, rules and orders (the "Export Laws"). In addition to any other remedy it may have, Seller may suspend or cancel the export, delivery, installation, or any maintenance or repair service of any Item if (i) Seller has not received all export-related documentation requested by Seller, including end-user certificates, (ii) Seller has not received the governmental approvals that Seller deems to be required, or (iii) Seller believes that such activity may violate any Export Laws or Seller's own compliance policies. Buyer shall not export, re-export or otherwise transfer or provide any Item in contravention of any Export Law or any end-user certificate provided by Buyer, including to an embargoed or otherwise sanctioned country, to anyone listed on any prohibited persons list published by the U.S., the UN, the EU or the OSCE, or for a prohibited end-use (such as research on or development of chemical, biological, or nuclear weapons, unmanned air vehicles or missiles, or nuclear explosive or fuel cycle activities). Buyer must notify Seller before providing any technical data to Seller that is controlled under any Export Law. Seller will not be liable to Buyer for any loss or expense if Buyer fails to comply with any Export Law. Buyer will indemnify, defend and hold harmless Seller from all claims, damages, fines, penalties, liability losses, costs and expenses made against or incurred by Seller arising from Buyer's breach of Export Laws.

(b) Imports. Buyer will comply with all applicable import laws or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller if an import permit, license or other authorization is required in connection with any such import.

(c) Compliance in Relation to Spare Parts. Buyer understands, acknowledges, and agrees that, notwithstanding any provision in this Agreement or in related sales or service documentation to the contrary, (i) Buyer may only order spare parts at the Seller's commercial entity in the United States or as otherwise mutually agreed upon, (ii) this Agreement does not obligate Seller to deliver any spare part to Buyer, (iii) the provision of any spare part requires a new, separate order between Seller

Bruker Scientific LLC Terms and Conditions of Sale – Products and Services (USA)

and Buyer, (iv) Seller may, in its sole discretion, reject entering into such order or delivering any spare part, without any liability whatsoever to Seller and its affiliates, if Seller determines, in its sole discretion, that the export, re-export, in-country transfer, delivery, or provision of such spare part to Seller or its designees could potentially violate any applicable Trade Control Law or a Trade Control Restriction. Buyer will comply with all applicable import laws or other restrictions or conditions respecting the import of Items that are now in effect or are hereafter imposed by any government or other applicable jurisdiction. Buyer shall be responsible for obtaining any necessary import permit, license or authorization at its sole cost and expense. Buyer shall immediately notify Seller if an import permit, license or other authorization is required in connection with any such import.

(d) **DISCLAIMER AND INDEMNITY.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BUYER HEREBY DISCLAIMS AND BUYER HEREBY UNCONDITIONALLY WAIVES AND RELEASES ANY AND ALL ACTUAL OR POTENTIAL RIGHTS BUYER MIGHT HAVE AGAINST SELLER OR ANY PERSON DIRECTLY OR INDIRECTLY CONTROLLING SELLER REGARDING ANY FORM OF WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND OR TYPE, IN THE EVENT OF, OR ARISING FROM, ANY TRADE CONTROL IMPEDIMENT OR ANY RELATED DETERMINATION, ACTION, OR OMISSION OF SELLER DESCRIBED ABOVE. Buyer shall indemnify, defend, and hold harmless Seller against any and all liability, losses, costs, claims, damages, and expenses, including attorneys' fees and expenses, arising or resulting from Buyer's violation or alleged violation of this section or of any Trade Control Law. If Items are resold or transferred in violation of any Trade Control Law or the provisions of this Agreement, Seller shall not be obligated to provide any service or anything else for such Items.

18. GOVERNING LAW AND JURISDICTION. The Order and any dispute arising in relation thereto shall be interpreted and construed under the laws of the Commonwealth of Massachusetts, without regard to the choice of law provisions, and shall be subject to the exclusive jurisdiction of the federal and state courts located in the Commonwealth of Massachusetts. The U.N. Convention on Contracts for the International Sale of Goods is hereby excluded and not applicable.

19. Termination. In the event a party breaches any material term of this Order and fails to cure such breach within thirty (30) days of receipt of written notice from the other party, such party may immediately terminate the Order. If Seller terminates for Buyer's uncured breach, Buyer shall receive no refunds of fees paid and shall remain liable for all originally contracted fees specified in the Order.

20. Miscellaneous. In the event of any legal proceeding between the Seller and Buyer relating to this Agreement, neither party may claim the right to a trial by jury, and both parties waive any right they may have under applicable law or otherwise to a right to a trial by jury. Any action arising under this Agreement must be brought within two years from the date that the cause of action arose. In the event that any one or more provisions contained herein (other than the provisions obligating Buyer to pay Seller for the Products or Services) shall be held by a court of competent jurisdiction to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected or impaired thereby. Except as expressly set forth in this Order, the remedies contained herein are cumulative and in addition to any other remedies at law or in equity. Seller's failure to enforce, or Seller's waiver of a breach of, any provision contained herein shall not constitute a waiver of any other breach or of such provision. Any notice or communication required or permitted hereunder shall be in writing and shall be deemed received when personally delivered or three (3) business days after being sent by certified mail, postage prepaid, to a party at the address specified in this Order or at such other address as either party may from time to time designate to the other. A copy of notices to Seller shall be sent to the attention of Seller's Legal Counsel at Bruker Scientific LLC, 40 Manning Road, Billerica, MA 01821. This is the complete and exclusive statement of the agreement between Seller and Buyer with respect to Buyer's purchase of the Products and Services. No waiver, consent, modification, amendment or change of the terms contained herein shall be binding unless in writing and signed by Seller and Buyer.

Product description

LabScape Complete Maintenance Service Agreement for Microbiology and Diagnostics



1. Bruker LabScape Complete Maintenance Service Agreement is a maintenance service agreement, which provides complete service coverage.
2. The contract period is one year.
3. Included services:
 - a. Unlimited onsite emergency service visits.
 - b. Onsite response of three to five (3-5) business days: Monday-Friday 8:30 AM-5:00 PM.
 - c. Spare parts, labor & travel.
 - d. One Planned Maintenance (PM) visit with complete inspection of listed instrumentation. Service (work) includes labor, travel, a PM kit, complete inspection of the instrument with cleaning. Includes one additional PM or cleaning if necessary and diagnosed by a Bruker remote support engineer.
 - e. Wear & tear parts (e.g. lasers, detectors, tubes, pumps).
 - f. High Priority Remote Support during normal business hours. This includes call back within 1 hour during business hours, 2 hours after hours, unlimited phone calls and unlimited remote desktop support or unlimited augmented reality support (virtual engineer). Extended technical support hotline is available from 5:00 PM to 12:00 AM weekdays and 9:00 AM to 9:00 PM on weekends and holidays.
 - g. Compass and Data Analysis software updates and upgrades, library updates. Bruker proprietary software only.
4. Excluded services:
 - a. Hardware necessary to upgrade system compatibility.
 - b. Requalification (IQ/OQ/PV) is not included in this contract.
 - c. Contract does not cover the following items unless otherwise stated: Printers, Robotics, Galaxies, non-Bruker instruments or consumables (Capillaries, Targets, Chemicals, etc.).
 - d. Relocation.
 - e. All 3rd party software and software subscriptions. Excludes any license subscriptions. Major revision changes or upgrades may include a fee.
 - f. Further exclusions are noted in the Terms and Conditions.
5. Conditions:
 - a. Relocation of an instrument under contract without notifying Bruker may void the contract. For relocation of instrument please contact your local Bruker office.
 - b. Bruker's first line of support is via remote access. Bruker will eventually use different tools for remote access. If remote access is not possible a minimum of two (2) business days will add to any onsite response of Bruker. Response time counting begins once a certified Bruker engineer diagnoses the system and recommends a visit (remote diagnosis) or after customer call reception (no remote diagnosis possible). Service response excludes weekends, company, and local public holidays. On-site response times dependent on travel visa and part arrive on time. The availability of parts and travel visa might be subject of delays which are out of Bruker influence.
 - c. Customer must receive a Bruker quote for non-covered products and place a purchase order in reference to this before any onsite work can be initiated. This might cause delays which are not entirely under control of Bruker.
 - d. The delivery of covered and non-covered products and services might be delayed due to legal aspects such as but not limited to export compliance delays (within Bruker or even outside of Bruker), custom clearance processes (customer reliability), governmental travel restrictions or other legal regulations, which are not under all circumstances entirely under control of Bruker.
 - e. All work will be performed by Bruker OEM factory-certified Support or Field Service Engineers.
 - f. For IVD/ CA system, software and library are registered/approved and cleared for use with registered/approved Bruker CARE products. The use of non-Bruker reagents and consumables is therefore not permitted and is consequently leading to immediate invalidity of this contract. In this case contract fees will not be reimbursed.
6. Additional services are available at the prevailing rates:
 - a. Additional Planned Maintenance.
 - b. Operational Qualification / Performance Validation (OQ/PV).
 - c. Premium discount on operation or application training courses.
 - d. Premium discount on software upgrades and postprocessing software licenses.