Executive Summary:

- **Supplier**: Hunt Optics & Imaging, Inc. / B & B Microscopes, LTD.
- **Purchase order issuance date**: 5/10/16
- **Framework order number**: 5500006473
- **Max Amount Not-to Exceed**: $5,000,000.00.
- **Dates**:
  - **Start date**: May 1, 2016
  - **End date**: June 30, 2021
  - **Renewal term**: Option to extend up to 5 additional years. Accordingly, the maximum possible end date is June 30, 2026.
- **Total Cost of Ownership**:
  - **Restocking fees**: 15% for regular catalog items; no returns available for special-made items.
  - **Delivery/Shipping fees**: Varies.
  - **Shipping insurance available**: Yes
  - **Extended warranty**: Available for purchase on certain items.
- **Scope**: Supplier’s entire microscope product line, including used, refurbished, and new microscopes and accessories, and training, warranty, service, etc.
- **Administrative Information**:
  - **How to order**: The University will reference this purchase order number when ordering. The University’s departments may order by email orders@hoi-inc.com or faxed to 1-877-768-1984. Supplier shall ensure that the order is a valid order from the University.
  - **Buyer**: Blake Reagan, J.D., Director of Procurement Services
  - **Buyer’s Email**: breagan@utk.edu
  - **Supplier’s Representative**: Ann Hunt
  - **Supplier’s Email**: Ann.Hunt@bbmicro.com
  - **Supplier’s Customer Service Phone Number**: 1-800-448-3929

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1 The University intends for the executive summary page to provide at-a-glance information about this agreement. The executive summary is for convenience only, and is not part of the agreement’s terms and conditions.
2 The Office of Procurement Services may increase this amount, if needed.
Part A: Background

a) The University issued a competitive bid solicitation for microscope suppliers on Saturday, February 27, 2016.

b) The University’s goal is to streamline the microscope procurement process to help improve its research procurement processes.

c) Supplier responded to the bid solicitation, and the University’s scoring committee determined that Supplier was qualified to win an award through the solicitation.

d) The University and Supplier intend for this agreement to cover Supplier’s entire microscope product line, Supplier’s entire microscope accessory line, and Supplier’s microscope training, warranty, service, etc.

e) The University’s departments may purchase any goods or services that fall within the scope of this agreement without additional formal bidding or sole-source approvals (no sole-source approvals are needed because this was bid). Note, however, that the University’s departments may negotiate discounts with Supplier when ordering high-volume, or when ordering high-priced goods or services.

Agreement: The parties agree as follows:

Part B: Agreement-specific terms

1) Scope: This agreement applies to Supplier’s entire product line for microscopes, including microscopes that Supplier creates after the start date of this agreement. This agreement covers new, used, and refurbished equipment. Further, this agreement covers warranty, training, etc. Where specific pricing is not included, the University and Supplier will negotiate prices. All of Supplier’s goods and services within the scope of this agreement are referred to as “Products.”

2) Promotion: The parties will promote this agreement to the University research community.

3) Total Costs of Ownership:
   a. Prices:
      i. Microscopes and Accessories: 8% discount off manufacturer’s list price.
      ii. Confocals, Slide Scanning: 3% discount off manufacturer’s list price.
      iii. Digital Imaging: 6% discount off manufacturer’s list price.
      v. Service/Maintenance: Negotiated per purchase.
      vi. Extended Warranty Plans: Negotiated per purchase.
vii. **Price Decreases:** Supplier may decrease its prices at any time, and Supplier shall make reasonable efforts to engage in efficiency measures intended to cut Suppliers’ cost. Supplier shall give the University notice of any price decreases.

viii. **Price Increases:** Supplier shall not reduce its base discounts without obtaining written permission from the Director of Procurement Services.

ix. **Taxes:** Supplier will make reasonable efforts to ensure that it accounts for the University’s tax-exemption certificate, when applicable. Supplier is responsible for obtaining University’s tax-exemption certification.

b. **Warranty:** The parties may negotiate extended warranty pricing on a product-by-product basis.

c. **Shipping:**
   i. **Insurance:** Supplier shall offer shipping insurance to the University.

   ii. **FOB:** FOB University destination.

   iii. **Shipping costs:** University must pre-pay for shipping and add to the invoice. Shipping will be quoted with each system.

   iv. **Inspection:** University shall inspect and approve equipment within 35 days of receipt and notify Supplier of any issues immediately.

   v. **Damages:** Damages during shipping are covered via FOB Destination Prepay and Add - title passes to University upon delivery. Supplier covers damages during shipment. The University must immediately advise of any damage to shipping containers upon receipt.

d. **Re-stocking:**
   i. Regular items (i.e. not special-order): 15% fee, if the manufacturer charges Supplier a fee to return the item(s).

   ii. Special-order items: The University cannot return special-order items, unless the manufacturer approves.

e. **Returns:** Returns must occur within 35 days of product delivery and include the original packaging. The exception is special-order items which require Supplier approval at all times and original packaging. Outside of the 35-day window requires Supplier’s approval and again all original packaging.
4) **Supplier Compliance Verification:**
   a. Self-Verification: Supplier shall make reasonable efforts to ensure that it complies with the pricing in this agreement.
   b. Data: Supplier shall provide the University’s Office of Procurement Services with the following data no later than January 15, April 15, July 15, October 15:
      a. Data: University PO number;
      b. Quote Number;
      c. Invoice Number;
      d. Invoice Date;
      e. Department Name;
      f. Order Date;
      g. Delivery Date;
      h. Vendor Item Code;
      i. Item Description;
      j. List Price;
      k. Order Method;
      l. Discount;
      m. Method of Payment;

**Part C: General Terms**

1) **Term:**
   a. **Initial Term:** The initial term of this agreement begins May 1, 2016 and ends at 11:59 PM Eastern Time on June 30, 2021.
   
   b. **Renewal Term:** Upon mutual written agreement, the parties may extend this agreement for up to 5 years, with a final end date of June 30, 2026.
   
   c. **Auto Renewal Prohibited:** This agreement does not automatically renew.

2) **Unrestricted Termination:** The University may terminate this agreement for any reason by giving the Supplier at least 60 days’ prior notice. Upon receiving the University’s notice, the Supplier shall stop all work.

3) **No Obligation on University to Make Purchases; Not Exclusive:**
   a. **No Obligation to Purchase:** The parties agree that this agreement does not obligate University to make any purchases from Supplier.
b. **Not Exclusive**: This agreement does not create an exclusive arrangement between University and Supplier.

4) **Compliance; Monitoring; Audit**:
   a. **Compliance**: Supplier shall make reasonable efforts to ensure that it complies with the terms and conditions of this agreement.
   
b. **Monitoring**: University will monitor Supplier’s performance at all times. Supplier shall cooperate with University in University’s efforts to monitor Supplier’s performance.
   
c. **Records; Audit**:
      i. **Records**: Supplier shall maintain records for all expenses for which Supplier invoices the University under this agreement. Supplier shall maintain its records for at least 3 years, and shall maintain its records in accordance with generally accepted accounting principles.
      
      ii. **Audit**: During the term of this agreement and for 3 years after the last payment from the University to Supplier under this agreement, the state of Tennessee Comptroller or the University’s internal audit, or both, may audit Supplier’s records that relate to this agreement.

5) **Governing Law; Venue**:
   a. **Governing Law**: The internal laws of the State of Tennessee, without giving effect to its principles of conflicts of law, govern this agreement. The University’s liability is governed by the Tennessee Claims Commission Act.
   
   b. **Venue**: Supplier shall file any claims against the University in the Tennessee Claims Commission. Supplier irrevocably waives objection to this venue-selection clause.

6) **Illegal Immigrants**: In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Supplier hereby attests that it shall not knowingly utilize the services of an illegal immigrant in the United States in the performance of this agreement and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the United States in the performance of this agreement.

7) **Modification; Waiver**:
   a. **Modification**: No amendment of this agreement will be effective unless it is in writing and signed by authorized officials of both parties. Only the University’s authorized officials have the authority to bind the University. A list of the University’s authorized officials is located here: [http://treasurer.tennessee.edu/contracts/contractssignature.html](http://treasurer.tennessee.edu/contracts/contractssignature.html).
b. **Waiver:** No waiver of satisfaction of a condition or failure to comply with an obligation under this agreement will be effective unless it is in writing and signed by the party granting the waiver, and no such waiver will constitute a waiver of satisfaction of any other condition or failure to comply with any other obligation.

8) **Force Majeure:** Neither party’s delay or failure to perform any provision of this agreement, as result of circumstances beyond its control (including, without limitation, war, strikes, floods, governmental restrictions, power, telecommunications or Internet failures, or damage to or destruction of any network facilities) will be deemed a breach of this agreement.

9) **Dispute Resolution:** Supplier and University shall negotiate in good faith to resolve any disputes amicably.

10) **Assignment:** This agreement is personal to the University, and the University may not assign its rights or delegate its duties under this agreement.

11) **Waiver of Claims:**
   a. **Respondent’s Intent:** Supplier intends to protect the University’s employees from personal liability. Accordingly, Supplier intends to waive and release any claims against the University’s employees.
   
   b. **Irrevocable Waiver:** Supplier hereby irrevocably waives any claims against the University’s employees or former employees. Supplier hereby covenants not to sue University employees or former employees in their individual capacity. This release and waiver applies to Supplier and Supplier’s successors, heirs, and assigns.
   
   c. **Materiality:** The University and Supplier state that this clause is material to this agreement.

12) **University Policies:**
   a. **Non-Solicitation:** Supplier shall comply with the University’s “Vending and Solicitations on the University Campus” policy:
   
   http://policy.tennessee.edu/fiscal_policy/fi0325/
   
   b. **Gift Acceptance:** Supplier shall comply with the University’s “Employee Gift Acceptance Policy”:
   
   http://policy.tennessee.edu/fiscal_policy/fi0717/

13) **Notice:**
   a. For a notice or other communication under this agreement to be valid, it must be in writing and delivered (1) by hand, (2) by a national transportation company, with all fees prepaid, or (3) by registered or certified mail, return receipt requested and postage prepaid;
b. Subject to sub-section (d) below, a valid notice or other communication under this agreement will be effective when received by the party to which it is addressed. It will be deemed to have been received as follows:
   i. if it is delivered by hand, delivered by a national transportation company, with all fees prepaid, or delivered by registered or certified mail, return receipt requested and postage prepaid, upon receipt as indicated by the date on the signed receipt; and
   ii. if the party to which it is addressed rejects or otherwise refuses to accept it, or if it cannot be delivered because of a change in address for which no notice was given, then upon that rejection, refusal, or inability to deliver.

c. For a notice or other communication to a party under this agreement to be valid, it must be addressed using the information specified below for that party or any other information specified by that party in a notice in accordance with this section.

Supplier:
Hunt Optics & Imaging, Inc.
490 Lowries Run Road
Pittsburgh, PA 15237
Fax: 877-768-1984
Email: Ann.Hunt@bbmicro.com

University:
The University of Tennessee
5723 Middlebrook Pike
Knoxville, TN 37921-5946
ATTN: Office of Procurement Services
Fax: 865-974-2701
Email: procurement@tennessee.edu

d. If a notice or other communication addressed to a party is received after 5:00 p.m. on a business day at the location specified in the address for that party, or on a day that is not a business day, then the notice will be deemed received at 9:00 a.m. on the next business day

14) Registration with Tennessee Department of Revenue: In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Supplier hereby attests that it has registered with the State of Tennessee’s Department of Revenue for the collection of Tennessee sales and use tax. This registration requirement is a material requirement of this agreement.
15) **Use of University Intellectual Property:** Except as allowed in this section, Supplier shall not use the University’s name, logo, or any other University-owned intellectual property for any reason, without the written consent of an authorized official of the University. During the term of this agreement, Supplier may list the University’s name in Supplier’s list of clients.

16) **Third-Party Beneficiaries:** There are no third-party beneficiaries to this agreement.

17) **Export Control:** University shall comply with all applicable laws governing export control. Further, University shall not, directly or indirectly, transmit, deliver, send or export any product to any foreign country (i) in violation of any of the United States export control laws or regulations, and (ii) without first obtaining the express written consent of Supplier.

18) **Nature of Parties:** The parties intend for Supplier to be an independent contractor. Accordingly, Supplier is responsible for all taxes and insurance related to this agreement.

19) **Severability:** The parties intend as follows:
   a. that if any provision of this agreement is held to be unenforceable, then that provision will be modified to the minimum extent necessary to make it enforceable, unless that modification is not permitted by law, in which case that provision will be disregarded;
   b. that if an unenforceable provision is modified or disregarded in accordance with this section, then the rest of the agreement will remain in effect as written; and
   c. that any unenforceable provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable.

20) **Entire agreement:** This agreement constitutes the entire understanding between the parties with respect to the subject matter of this agreement and supersedes all other agreements, whether written or oral, between the parties. In the event Supplier’s website, mobile applications, or other platforms contain click-wrap, browse-wrap, or shrink-wrap terms and conditions, Supplier states that such terms and conditions do not apply to University.