Executive Summary:

- **Supplier**: Keyence Corp. of America (“Supplier” or “Keyence”)
- **UT Vendor #:** 1116212
- **Purchase Order (UT PO framework) number**: 5500006489
- **Amount**: $5,000,000.00
- **Payment**:
  - Method: ACH
  - Time: Net 30
- **Dates**:
  - Start date: May 1, 2016
  - End date: June 30, 2021
  - Renewal term: Option to extend up to 5 additional years.
- **Total Cost of Ownership**:
  - Restocking fees: 25% when Supplier authorizes a return.
  - Delivery/Shipping fees: Varies by transaction.
- **Scope**: Keyence’s entire product line and entire service offering.
- **Attachments**: None
- **Administrative Information**:
  - How to order: The University will reference this purchase order number when ordering.
  - Buyer: Blake Reagan, J.D.
  - Buyer’s Email: breagan@utk.edu
  - Supplier’s Representative: Keyence Customer Service (see below).
  - Supplier’s Email: CustomerService@Keyence.com
  - Supplier’s Customer Service Phone Number: 1-888-KEYENCE

1 The University intends for the executive summary 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 This amount is required for the University's accounting system. The Office of Procurement Services can raise 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 service, repairs, 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 and service lines, 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.

2) Product and Service Modifications: Keyence reserves the right to modify unordered products or services from time to time, including the right to discontinue the products or services.

3) Separate Sale: The parties acknowledge that each shipment is a separate sale.

4) Promotion: The parties will promote this agreement to the University research community.
5) **Total Costs of Ownership:**

a. **Prices:**
   i. **Prices:** Keyence will give the University base line 5% discount on the microscope, parts, and accessories.
   
   ii. **Taxes:** Supplier will make reasonable efforts to ensure that it accounts for the University’s tax-exemption certificate. Supplier is responsible for obtaining University’s tax-exemption certification.

b. **Warranties and Disclaimers:**

   i. Keyence warrants the products to be free of defects in material and workmanship for one (1) year from shipment. Any products found to be defective must be shipped to Keyence, freight prepaid, or offered to Keyence for inspection and examination. Upon examination, Keyence, at its sole option, will refund the purchase price of, or repair or replace at no charge, any products found to be defective. This warranty extends to the original University only, and does not apply to any defects resulting from University’s improper or inappropriate installation, interfacing, repair, modification, application and handling, such as exposure to outdoors air, excessive current, heat, coldness, moisture or vibration. Components which wear are not warranted.

   ii. Keyence may offer suggestions on the use of its various products, but the assessment of usefulness and suitability of the Products for each application rests solely with University. Keyence will not be responsible for any damages that may result from the use of the Products in University’s application. The products and any trial units supplied to University are not to be used internally in humans, for human transportation, as safety devices or fail-safe systems, unless their written specifications state otherwise. In the event that the University uses a product or trial unit except as directed by Keyence, the University hereby waives all claims against Keyence for any claims that arise from the University’s misuse of the product or trial unit. Further, Keyence will not be liable for any claims that arise from the University’s misuse of a product or trial unit.

   iii. Other than as stated herein, the products/trial units are provided with no other warranties whatsoever. All express, implied, and statutory warranties, including, without limitation, the warranties of merchantability, fitness for a particular purpose, and non-infringement of proprietary rights, are expressly disclaimed. In no event shall Keyence and its affiliated entities be liable to any person or entity for any direct, indirect, incidental, punitive, special or consequential damages (including, without limitation, any damages resulting
from loss of use, business interruption, loss of information, loss or inaccuracy of data, loss of profits, loss of savings, the cost of procurement of substituted goods, services or technologies, or for any matter arising out of or in connection with the use or inability to use the products, even if Keyence or one of its affiliated entities was advised of a possible third party’s claim for damages or any other claim against the university. In some jurisdictions, some of the foregoing warranty disclaimers or damage limitations may not apply.

c. **Shipping:**
   i. **Insurance:** Supplier shall offer shipping insurance to the University.
   
   ii. **Partial Shipments:** Supplier may ship products in whole or partial shipments.
   
   iii. **FOB:** Supplier will ship all products FOB shipping point and, when Supplier delivers the product(s) to a carrier, University assumes all risk of loss or damage to the product.
   
   iv. **Shipping costs:** University is responsible for all shipping costs. Supplier will add all shipping costs to University’s invoice, unless otherwise stipulated by Supplier.
   
   v. **Delivery:** Keyence will ship the product on a freight-space-available basis.
   
   vi. **Damages and Inspection:** The University must inspect products as soon as possible after the University receives the products. The University must notify Keyence of any damages within 14 days from the time that the University receives the product. If the University identifies damage within this 14-day time period, the University must notify Keyence by calling 1-888-539-3623.

d. **Shortage:** If Keyence ships an order that does not contain the full amount of product that the University ordered and Keyence does not notify the University that Keyence will fill any shortage, the University must notify Keyence of the shortage within 14 days of the University receiving the product in order for the University to receive credit for the shortage.

e. **Cancel:** The University may cancel an order without penalty, provided that:
   i. The product is a regular catalog product from Keyence (i.e. not a product made via special-order),
   
   ii. The University requests to cancel the order before Keyence ships, and
   
   iii. The University contacts Keyence at 1-888-539-3623 to cancel the order.
f. **Returns**: To determine whether the University can return an product, the University must follow these steps:
   i. **Time**: In order to be eligible to seek Keyence’s approval to return a product, the University must request approval from Keyence within 14 days of the University’s receipt of the product.
   
   ii. **Return Merchandise Authorization (“RMA”) Number (“RMA #”)**: The University must contact Supplier at 1-888-KEYENCE (539-3623) and request the RMA #.
   
   iii. **Return Merchandise Authorization Form**: Supplier will provide the University with an RMA Form. The University will use the RMA form when returning an product.
   
   iv. **Supplier Inspection**: Supplier will inspect the products before the Supplier determines whether the University will receive credit for the returned product. In the event that the University damaged the product, the University must pay for repair costs. If the University damaged the product, Keyence will send the University a quote for Keyence’s inspection and repair. Any inspection and repair charges are in addition to any re-stocking fee.
   
   v. **Address**: After Supplier authorizes the University to return an product, the University must send the product to:

   Keyence Corp. of America  
   Warehouse  
   909 West Irving Park Road  
   Itasca, IL 60143

   g. **Re-stocking**: Supplier will charge the University with a 25% restocking fee for all products that the University returns. As stated above, Supplier must first authorize a return before the University may return a product.

6) **Payment**:
   a. **Prices**: Prices and terms of payment stated in the invoice are not subject to any discount, rebate or modification, except if, during the time between the invoice date and the payment date, the products’ cost to Keyence is increased by reason of (a) any new legislation or regulations, any additional duty or tariff, or any “Force Majeure” described below, such an increase may be added to the invoice and shall be payable by University; and (b) any change in the foreign currency exchange rate,
the invoice may be subject to renegotiation for adjustment or may be canceled by Keyence without any penalties. Note: Keyence obtains its products from Japan.  
**Keyence will notify the University when Keyence’s quoted price is not fixed.**

b. **Late Payment**: In the event that the University pays late, Supplier may charge up to 1.5% interest. Any interest on a late payment will not exceed the rate allowable under the Tennessee Prompt Pay Act, Tenn. Code Ann. §§ 12-4-701 et. seq.

c. **Method**: ACH.

d. **Keyence right to deny sale**: Keyence may alter or suspend credit or stop selling to Buyer, whenever the payment history or financial condition of Buyer warrants such action.

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**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**:
   a. **Of this PO**: The University may terminate this agreement for any reason by giving the Supplier at least 30 days’ prior notice. Upon receiving the University’s notice, the Supplier shall stop all work.

   b. **Of an existing order**: The University must contact Keyence’s customer service department to cancel any outstanding orders.

   c. **Then-existing service plans**: If the University terminates this agreement, any then-existing service plans will continue until the service plan expires.

3) **Export Control**: The University shall comply with applicable export control laws and regulations in the United States.

4) **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.

5) **University's Responsibility Regarding Delivery Locations**: If applicable, Supplier shall supply University with environmental specifications for certain Products, such as specifications for power, water, and HVAC. University is solely responsible for University ensuring that the location intended for such Product meets these specifications prior to delivery of the Product. University’s failure to fully prepare the intended location to meet such specifications will not be deemed reason for non-payment of any invoice.

6) **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.

7) **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.

8) **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/contractsignature.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.

9) **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.

10) **Dispute Resolution**: The parties shall make reasonable efforts to resolve any dispute before filing any formal legal action. Accordingly, the parties shall make good faith efforts to resolve any disputes amicably.

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

12) **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.

13) **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/](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/](http://policy.tennessee.edu/fiscal_policy/fi0717/)

14) **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:
  Keyence Corporation of America  
  669 River Drive, Suite 403  
  Elmwood Park, NJ 07407

University:
  The University of Tennessee  
  5723 Middlebrook Pike  
  Knoxville, TN 37921-5946  
  ATTN: Office of Procurement Services

Fax: 865-974-2701

Email: contracts@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

15) 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.

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

18) **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.

19) **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.

20) **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.

21) **Entire agreement**: Except for Keyence’s software license 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.

22) **Software license agreement**: Keyence’s software license agreement governs Keyence’s software products. If the following terms and conditions appear in Keyence’s software license agreement, such terms do not apply to the University:
   a. Governing law.
   c. University’s obligation to indemnify, defend, or hold harmless Keyence.
   d. University’s obligation to pay Keyence’s attorneys’ fees.