Purchase Order Executive Summary:

- **Nikon**: Nikon Instruments, Inc. (“Nikon”)
- **Purchase order issuance date**: 5/27/2016
- **PO (framework) order number**: 5500006527
- **Amount**: $7,000,000
- **Dates**:
  - **Start date**: May 1, 2016
  - **End date**: June 30, 2021
  - **Renewal term**: Option to extend up to 5 additional years.
- **Scope**: Nikon's entire microscope product line, including used, refurbished, and new microscopes and accessories, and training, warranty, service, etc.
- **Attachments**:
  - **Exhibit 1**: Nikon’s price list. (UT employees may contact breagan@utk.edu to obtain or view by accessing the IRIS/SAP system and viewing PO attachments for PO # 5500006527).
  - **Exhibit 2**: Nikon’s click-wrap terms and conditions that apply to software.
  - **Exhibit 3**: Nikon’s sample warranty.
- **Administrative Information**:
  - **How to order**: The University will reference this purchase order number when ordering.
  - **University Information**:
    - **Buyer**: Blake Reagan
    - **Buyer’s Email**: breagan@utk.edu
  - **Nikon’s Information**:
    - **Representative**: Cumberland Dugan
    - **Phone**: 615-510-2994
    - **Email**: cdugan@nikon.net

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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. This amount does not represent a guaranteed commitment.
**Purchase Order**

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

d) The University and Nikon intend for this agreement to cover Nikon’s entire microscope product line, Nikon’s entire microscope accessory line, and Nikon’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 Nikon 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 Nikon’s entire product line for microscopes, including microscopes that Nikon 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 Nikon will negotiate prices. All of Nikon’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. **Attached List:** Nikon’s price list is available to University staff members. Please contact Blake Reagan via email to obtain: breagan@utk.edu.
ii. **Price Decreases**: Nikon may decrease its prices at any time, and Nikon shall make reasonable efforts to engage in efficiency measures intended to cut Nikons’ cost. Nikon shall give the University notice of any price decreases.

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

iv. **Taxes**: Nikon will make reasonable efforts to ensure that it accounts for the University’s tax-exemption certificate. Nikon is responsible for obtaining University’s tax-exemption certification.

b. **Warranty**: The parties may negotiate extended warranty pricing on a product-by-product basis. Nikon’s sample warranty is attached in Exhibit 3.

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

   ii. **FOB**: All shipments are F.O.B. Nikon Instruments’ U.S.A. facility from which Products are shipped. Title and risk of loss to products transfer to buyer upon delivery to the carrier.

   iii. **Shipping costs**: University is responsible for all shipping costs. Nikon will add all shipping costs to University’s invoice, unless otherwise stipulated by Nikon Instruments.

   iv. **Dates**: Dates of delivery are determined from the date of Nikon Instruments’ acceptance of any purchase order or purchase orders by University and are estimates of approximate dates of delivery, not a guaranty of a particular date of delivery. Nikon Instruments shall not be liable for failure or delay in shipping products under this agreement for any reason whatsoever.

   v. **Damages**: All claims for damage, carton shortage, pilferage, or non-delivery must be made by University to the delivering carrier as Nikon Instruments is not responsible for such claims. Upon request of the University, Nikon Instruments will cooperate in presenting the claim to the carrier providing Nikon Instruments is notified (i) in the case of damage, carton shortage, or pilferage, within three (3) working days after receipt of shipment and the proper claim exception has been noted on the delivery receipt; (ii) in the case of damage or pilferage not readily apparent at the time of delivery, within ten (10) days after receipt of shipment and shipment is left intact until examination is made by carrier; and (iii) in the case of non-delivery, in writing within ten (10) days from date of invoice.
vi. **Shipping in Installments:** Nikon Instruments may ship in installments and shall render a separate invoice for each installment, and University shall pay each such invoice when due, without regard to subsequent shipments. Each installment shall be deemed a separate sale. Delay in delivery of any installment shall not relieve University of its obligation to accept delivery of remaining installments.

vii. **Inspection:** University shall promptly inspect all products and notify Nikon Instruments in writing of any claims for damages within twenty (20) days of receipt of Product. In the absence of such notification, Products will be deemed accepted upon installation or confirmed delivery if no installation is to be provided. The absence of such notification will be deemed a waiver by University of any and all such claims.

d. **Re-stocking:** Nikon may charge the University a restocking fee of 15% of the University’s purchase price.

e. **Returns:** Product must be new, unmarked and in original packaging with all warranty information as originally supplied. All such Product returned as defective must also be accompanied by a letter that clearly states the problem and shall be subject to inspection and verification by Nikon. All Product determined by Nikon, at Nikon’s sole discretion, to be defective will be exchanged on a unit-by-unit basis, subject to availability, and if not available, the Product will be repaired as expeditiously as is reasonably possible and in the event that any such repair cannot be completed within 60 days after Nikon’s receipt of the Product, a credit shall be issued to the University in the amount actually paid for such Product. All Product returned to Nikon with Nikon’s prior authorization in its sole discretion for a reason other than as defective, or that is determined by Nikon not to be defective, is subject to a 15 percent restocking charge. All authorized returns must be shipped prepaid with a statement of the original invoice number and date, and delivered to a certified carrier within 15 days of Nikon issuing a “return authorization.” If, at Nikon’s sole discretion, a product is determined to be defective, shipping costs will be reimbursed. Any Products returned without prior authorization from Nikon will be returned to the University at the University’s expense. Return requests for special orders, custom orders, or specific equipment requiring special factory orders will not be accepted at any time.

4) **Nikon Compliance Verification:**
   a. **Self-Verification:** Nikon shall make reasonable efforts to ensure that it complies with the pricing in this agreement.
b. **Data:** Nikon 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. Invoice Number;
   b. Invoice Date;
   c. Department Name;
   d. Order Date;
   e. Vendor Item Code;
   f. Item Description;
   g. List Price;
   h. Discount;
   i. Net Price.

**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 Nikon at least 60 days’ prior written notice. Upon receiving the University’s notice, Nikon shall stop all work. In the event that the University has open/pending orders that it submitted before termination, Nikon shall fulfill the orders unless the University cancels each open/pending order.

3) **Orders:** All orders received by Nikon Instruments Inc. (“Nikon Instruments”) for products under this agreement (“Products”) shall be subject to Nikon Instruments' approval and acceptance, and Nikon Instruments reserves the right to reject any order in whole or in part. No order shall be deemed accepted by Nikon Instruments unless acknowledged by Nikon Instruments in writing by an authorized representative of Nikon Instruments at its Melville, NY headquarters. Nikon Instruments reserves the right without prior notice to discontinue the sale of any Products, to change any Products and Product specifications, to allocate any Products, and to cancel any accepted order to the extent of any back-order Products. All sales of Products under this agreement shall be subject to the terms and conditions contained in this agreement, and any purchase order or other business form which contains terms or conditions which are in addition to, in conflict with, or inconsistent
with, the terms and conditions contained in this agreement are hereby rejected and such terms and conditions are of no force and effect.

4) **Nikon’s Quotes:**
   a. **Validity period:** Nikon’s quotes are valid for 30 days, or longer if Nikon explicitly states a longer duration on Nikon’s quotes.

   b. **General terms governing quotes:** prices subject to change without notice. Nikon will endeavor to ship to you for your acceptance, your substantially complete working system as soon as possible. We will ship the entire order within the stated delivery time on this quotation. All Nikon products are covered by a limited one year warranty electrical - 5 year warranty mechanical - we specifically disclaim any and all warranties, express or implied, including but not limited to any implied warranties or with regard to any licensed products. We shall not be liable for any loss of profits, business, goodwill, data, interruption of business, nor for incidental or consequential merchantability or fitness of purpose, damages related to this agreement minimum 15% restocking fee with original packaging items and prices stated herein are confidential and are not to be shared with third parties without prior written consent from Nikon Instruments Inc. In the event that terms and conditions on Nikon’s quotes conflict with this agreement, this agreement will prevail.

5) **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 Nikon.

   b. **Not Exclusive:** This agreement does not create an exclusive arrangement between University and Nikon.

6) **University’s Responsibility Regarding Delivery Locations:** If applicable, Nikon 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.

7) **Compliance; Monitoring; Audit:**
   a. **Compliance:** Nikon shall make reasonable efforts to ensure that it complies with the terms and conditions of this agreement.

   b. **Monitoring:** University will monitor Nikon’s performance at all times. Nikon shall cooperative with University in University’s efforts to monitor Nikon’s performance.
c. **Records; Audit:**

   i. **Records:** Nikon shall maintain records for all expenses for which Nikon invoices the University under this agreement. Nikon 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 Nikon under this agreement, the state of Tennessee Comptroller or the University’s internal audit, or both, may audit Nikon’s records that relate to this agreement.

8) **Illegal Immigrants:** In compliance with the requirements of Tenn. Code Ann. § 12-3-309, Nikon 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.

9) **Disclaimer of Warranties; Limitation of Nikon’s Liability:** Other than the warranties set forth in the warranty card that accompanies the product, the “click wrap” or “shrink wrap” end user license agreement that governs the use of software product, or this quotation, if any, as the case may be, there are no warranties, express or implied, including but not limited to any implied warranty of merchantability or fitness for a particular purpose or non-infringement, nor any obligation or liability for consequential, special, indirect, punitive or incidental damages on the part of Nikon Instruments. Notwithstanding anything to the contrary contained in this quotation, Nikon Instruments’ liability on any claim of any kind arising from or relating directly or indirectly to the manufacture, sale, delivery, resale, repair or use of any products furnished by Nikon Instruments shall in no case exceed the price applicable to the product or part thereof which gives rise to the claim. In no event shall Nikon Instruments be liable for any indirect, punitive, special, incidental, or consequential damages.

10) **Click-Wrap:** Nikon’s terms and conditions governing software are attached as Exhibit 2.

11) **Nikon’s Obligation to Indemnify:** Nikon Instruments shall defend, indemnify, and hold University harmless from any costs or damages as a result of any third party action or claim brought against University in any court of competent jurisdiction based on an allegation that a Product furnished by Nikon Instruments hereunder constitutes an infringement of a United States patent or copyright of a third party, provided Nikon Instruments is notified promptly in writing of such action or claim, has sole control of the defense or settlement of any such action or claim, and receives the full cooperation of University in its defense or settlement of any such action or claim. This indemnification will apply only to actual costs and damages awarded against University and incorporated in a judgment by a court of last resort finding that such Product constitutes an infringement. In no event will Nikon
Instruments be responsible for any special, indirect, incidental, or consequential damages of any kind whatsoever incurred by University or for any costs or settlements incurred without Nikon Instruments’ prior written consent. In the event a final injunction is obtained against University’s use of a Product by reason of such infringement or in the event, in Nikon Instruments’ opinion, a Product is likely to become the subject of an action or claim of such infringement, Nikon Instruments will, at its option, (i) procure for University the right to continue using the Product, (ii) replace or modify the Product so that it becomes noninfringing, or (iii) give University a credit for the Product at an amount based on a depreciated straight line basis over the lifetime of the Product as shall be determined by Nikon Instruments. In no event shall Nikon Instruments have any other liability to University as the foregoing states Nikon Instruments’ entire liability for any patent or copyright infringement action or claim. This indemnification does not apply to any product that is modified or altered in any manner whatsoever by any party other than Nikon Instruments.

12) 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.

   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.

13) 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.

14) Dispute Resolution: If the Respondent is not satisfied with the University’s resolution of the Respondent’s protest, the Respondent shall enter into mediation with the University before the Respondent pursues any formal legal action. The parties shall make reasonable efforts to resolve any dispute before filing any formal legal action.

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

16) Waiver of Claims:
a. **Respondent’s Intent:** Nikon intends to protect the University’s employees from personal liability. Accordingly, Nikon intends to waive and release any claims against the University’s employees.

b. **Irrevocable Waiver:** Nikon hereby irrevocably waives any claims against the University’s employees or former employees. Nikon hereby covenants not to sue University employees or former employees in their individual capacity. This release and waiver applies to Nikon and Nikon’s successors, heirs, and assigns.

c. **Materiality:** The University and Nikon state that this clause is material to this agreement.

17) **University Policies:**
   a. **Non-Solicitation:** Nikon 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:** Nikon shall comply with the University’s “Employee Gift Acceptance Policy”: [http://policy.tennessee.edu/fiscal_policy/fi0717/](http://policy.tennessee.edu/fiscal_policy/fi0717/)

18) **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.

   **Nikon:**
   Nikon Instruments Inc.
   Attention: Order Fulfillment Manager
   1300 Walt Whitman Rd.
   Melville, NY 11747
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.

19) **Registration with Tennessee Department of Revenue**: In compliance with the requirements of Tenn. Code Ann. § 12-3-306, the Nikon 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.

20) **Use of University Intellectual Property**: Except as allowed in this section, Nikon 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, Nikon may list the University’s name in Nikon’s list of clients.

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

22) **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 Nikon.

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

24) **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.

25) **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 Nikon’s website, mobile applications, or other platforms contain click-wrap, browse-wrap, or shrink-wrap terms and conditions, Nikon states that such terms and conditions do not apply to University.

Approved:

![Signature]

Blake Alan Reagan
Dir. of Procurement Services

6/6/2016 | 09:58:11 EDT
Exhibit 1: Nikon’s Price List

University employees must email the Buyer to obtain the price list: breagan@utk.edu
Exhibit 2: Nikon’s Click-Wrap Agreement

This Exhibit 2 (“License Agreement”) contains additional terms that apply to the University and Nikon when the University uses Nikon-provided software, as defined below.

NIKON LICENSE AGREEMENT

This is a legal agreement between The University of Tennessee, the End User, and Nikon Corporation ("NIKON").

SOFTWARE LICENSE

GRANT OF LICENSE. NIKON grants to University the non exclusive right to use one copy of NIKON SOFTWARE program and documentation (the "SOFTWARE") on a single computer, at a single location. SOFTWARE also includes any update to the original SOFTWARE provided to University by NIKON. University may access the SOFTWARE from a hard disk, over a network, or by any other method the University chooses, so long as the University otherwise complies with this License Agreement. For the purposes of this section, "use" means loading the SOFTWARE into RAM, as well as installation on a hard disk or other storage device, provided that installation on a network server for the sole purpose of distribution to one or more other single computer(s) shall not constitute "use" for which a separate license is required, provided that the SOFTWARE is used on only one single computer at any one time. All rights not expressly granted to the University hereunder are reserved by NIKON.

COPYRIGHT. This license is not a sale of SOFTWARE and University does not become the owner of the SOFTWARE through its purchase, download or use. The SOFTWARE is owned by NIKON or its suppliers and is protected by copyright laws and international treaty provisions. Therefore, University must treat the SOFTWARE like any other copyrighted material (e.g., a book or musical recording) and University may not make or distribute copies of the SOFTWARE to others except that University may either (a) make one copy of the SOFTWARE solely for backup or archival purposes, or (b) transfer the SOFTWARE to a single hard disk provided University keeps the original solely for backup or archival purposes. University may not copy the written materials accompanying the SOFTWARE.

OTHER RESTRICTIONS. University may not assign, rent, lease, sell, sublicense, pledge, encumber or otherwise transfer the SOFTWARE to another party without the prior written consent of NIKON, which consent may be denied at NIKON’S sole discretion. Any attempt at violative assignment or other transfer, whether voluntary or by operation of law, shall be void and of no force and effect. University may not reverse engineer, decompile, or disassemble the SOFTWARE. University may not modify, alter, adapt, sell, distribute or create derivative works based on the SOFTWARE or any part thereof.

TERM. This License is effective until terminated. This License will terminate automatically without notice from NIKON if the University fail to comply with any provisions of this License.
Agreement. Upon termination of this Agreement, University must destroy the SOFTWARE and any copies thereof and all written materials, or return all of the foregoing to NIKON at University’s sole cost and expense.

LIMITED WARRANTY & LIMITATIONS OF WARRANTY AND LIABILITY

LIMITED WARRANTY. NIKON warrants to the original end user only that the disk on which the SOFTWARE is recorded is free from defects in material and workmanship under normal use and conditions for a period of ninety (90) days from the date of delivery to the original end user as evidenced by the original fee receipt. During this period, if there is any defect in material or workmanship to the disk, return it to the NIKON authorized distributor identified below, together with University’s original fee receipt, and it will be repaired or replaced free of charge. NIKON also warrants to the original end user only that SOFTWARE that is expressly stated as being warranted in the written materials accompanying the SOFTWARE will perform substantially in accordance with said written materials under normal use and conditions for a period of ninety (90) days from the date of delivery to the original end user as evidenced by the original fee receipt. During this period, if the SOFTWARE does not perform as warranted, return it to the NIKON authorized distributor identified below, together with University’s original fee receipt and it will be repaired or replaced free of charge. If the University ships the SOFTWARE to its NIKON authorized distributor, University must pay all postage, shipping, transportation, insurance, and delivery costs.

All of the foregoing warranties extend to the original end user only and are not assignable or transferable. These warranties do not apply to any SOFTWARE or disk which has been subject to misuse, abuse, negligence or accident. Any repaired or replaced disk or SOFTWARE shall be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. These warranties and the remedies thereunder are not available outside the country in which University obtained the SOFTWARE. All warranties implied by law on the SOFTWARE including but not limited to merchantability or fitness for a particular purpose, are limited to the duration of the above warranty. Nikon's entire liability and University’s exclusive remedy hereunder is limited solely to repair or replacement of the disk or SOFTWARE or, at NIKON's option, a refund of the license fee.

NO OTHER WARRANTIES. Except as otherwise set forth in this agreement, SOFTWARE is sold “as is” without any warranty of any kind, and NIKON and its suppliers disclaim all other warranties, either express or implied, with regard to the SOFTWARE. Except as expressly stated in NIKON's written materials that accompany the SOFTWARE, in no event does NIKON or its suppliers warrant the performance of or the results University may obtain from the SOFTWARE, or that the SOFTWARE will meet University’s requirements, or that the operation of the SOFTWARE will be uninterrupted or error-free.

NO LIABILITY FOR DIRECT, INDIRECT, CONSEQUENTIAL OR INCIDENTAL DAMAGES. In no event and under any theory of liability, tort, contract or otherwise, shall NIKON or its suppliers be liable to University for any damages, losses or expenses of any kind whatsoever including
without limitation, damages for loss of business profits, business interruption, loss of business information, or any other pecuniary loss) arising out of or resulting from the use of or inability to use this SOFTWARE, even if NIKON has been advised of the possibility of such damages, losses or expenses. Because some States do not allow the exclusion or limitation of consequential or incidental damages or limitations on how long an implied warranty lasts, the above limitations or exclusions may not apply to University.

Except as otherwise provided in this agreement, NIKON shall have no liability or responsibility of any kind (including liability for negligence) to University or any other person or entity with respect to any expense, loss or damage caused or alleged to have been caused, directly or indirectly, by the SOFTWARE. Notwithstanding the above limitations, NIKON's liability on any claim of any kind (including negligence) from the delivery, license or use of the SOFTWARE shall in no event exceed the fee University paid for the SOFTWARE.

FOREIGN EXPORT. University agrees and certifies that neither the SOFTWARE nor any related technical data is being or will be shipped, transferred, or re-exported, directly or indirectly, in or into any country in violation of any applicable laws of Japan and the United States.

GENERAL

This Agreement is governed by and shall be construed in accordance with the laws of the State of New York, excluding its conflict of law provisions. In the event a dispute arises under or in connection with this Agreement, you hereby agree and consent to the jurisdiction of the State of New York and waive any objection that such forum is inconvenient. You Regarding this License Agreement, University agrees to the service of process in any action by regular mail or other commercially reasonable means of receipted delivery. If any provisions of this License Agreement are be determined to be invalid, illegal or unenforceable for any reason, the remaining provisions shall in no way be affected and shall remain in full force and effect. This License Agreement supersedes and replaces any other agreement relating to the subject matter of this License Agreement.

ENTIRE AGREEMENT

This License Agreement sets forth the entire understanding and agreement between University and NIKON and may be amended only in a writing signed by both parties. Please provide a brief written description of the problem that is sought to be remedied when shipping the SOFTWARE.

All warranty matters should be addressed to:

NIKON INSTRUMENTS INC.
1300 Walt Whitman Road,
Melville, NY 11747-3064, U.S.A
Tel: +1-631-547-8500
Fax: +1-631-547-0306