Purchase Order Executive Summary:

- **Supplier**: Hitachi High Technologies America, Inc. (“Supplier”)
- **Purchase Order ("PO") issuance date**: 
- **Framework PO number**: 5500006663
- **Max Amount Not-to-Exceed**: $5,000,000.00
- **UT Marketplace Catalog?**: No
- **Dates**:
  - **Start date**: June 1, 2016
  - **End date**: June 30, 2021
  - **Renewal term**: Option to extend up to 5 additional years.
- **Total Cost of Ownership**:
  - **Restocking fees**: Returns are not allowed.
  - **Delivery/Shipping fees**: 
  - **Warranty**: 
- **Scope**: Supplier’s entire microscope product line, Supplier’s entire microscope accessory line, and Supplier’s microscope training, warranty, service, etc.
- **Attachments**:
  - **Sample order form** *(Attachment A)*.
  - **Hitachi High Technologies America, Inc. - Standard Service Agreement - Scanning / Transmission / Focused Ion Beam Electron Microscope** *(Attachment B1)*.
  - **Hitachi High Technologies America, Inc. - Three (3) And Five (5) Year Parts Guaranties - Scanning/Transmission/Focused Ion Beam Electron Microscope** *(Attachment B3)*.
- **Administrative Information**:
  - **How to order**: The University will reference this purchase order number when ordering. University departments must contact breagan@utk.edu to request an order form.
  - **Buyer**: Blake Reagan, J.D.

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 The Office of Procurement Services may increase this amount, if needed. This amount is required in the University’s procurement software system, and this amount does not represent a guarantee of spend or a maximum spend cap.
- **Buyer’s Email:** breagan@utk.edu
- **Supplier’s Representative:** Matthew Lee (Manager, Customer Service)
- **Supplier’s Email:** Matthew.Lee@hitachi-hta.com
- **Supplier’s Customer Service Phone Number:** (972) 615-9170
- **Additional Supplier Contact:** Doug Griffith (Southeastern Section Sales Manager), Email: Doug.Griffith@hitachi-hta.com; Phone Number: (770) 664-7460
Part A: Background

a) The University issued a competitive bid solicitation (a Request for Qualified Suppliers (“RFQ-S”)) for microscope suppliers on Saturday, February 27, 2016. The University’s SAP requisition number was 30002081.

b) The University’s goal through the RFQ-S process was to streamline the microscope procurement process to help streamline research-related procurement.

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.

Part B: Terms

Agreement: The parties agree as follows:

1) **Scope:** For Supplier’s sale to the University of products within its scope, this agreement replaces, supersedes and overrides all prior and contemporaneous negotiations, protocols, understandings or agreements between the parties related or ancillary to such sales, or to the products. No pre-printed or standard term or condition which may appear in either party’s order or confirmation document shall be binding on the other party or shall apply to sales under this agreement. 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.

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

3) **How University Departments Order:**
   a. **Obtain quotation:** University departments will contact Supplier and obtain a quotation.
   
   b. **Price and Price Changes:** Prices which are the subject of a firm written quotation from Supplier to University will remain firm only through the expiration date of such quotation. Thereafter, or in the absence of such quotation, Supplier’s list prices are subject to change without notice. Prices do not include freight, insurance, duties, handling charges or brokerage fees, except to the extent such
costs are Supplier’s responsibility pursuant to the trade term by which a price is designated in an order acknowledgment.

c. Payment Terms: University shall pay Supplier’s invoices within 30 days after the University’s receipt of the Supplier’s invoice; no pre-payment discount is allowed. University's obligation to pay Supplier’s invoices shall not be subject to any claim, defense or other right which University may have or assert against Supplier, and all amounts required to be paid under any invoice shall be paid in full in accordance with the terms hereof without set-off, deduction, restriction or condition. Whenever in the exercise of Supplier’s sole judgment University's credit-worthiness does not justify continuation of production or shipment on the terms of payment hereinabove specified, Supplier may hold back deliveries (including stoppage of shipments in transit and suspension of work-in-process) until it receives assurances of payment in form and content satisfactory to it and its counsel.

d. Interest on Late Payments: If the University fails to pay a non-disputed invoice within 30 days of the University receiving the invoice, the Supplier may charge up to 1.5% interest per month (prorated for any period of less than a full calendar-month).

e. Orders and Confirmations. The University shall issue a PO against Supplier’s quotation, prior to the expiration date thereof. Supplier shall accept the PO by timely issuing an order acknowledgment.

4) Total Costs of Ownership:
   a. Prices:
      i. Pricing Model: Supplier’s pricing model is: Supplier’s list-price minus discount.
      ii. Prices: Contact the Buyer for pricing: breagan@utk.edu; alternatively University departments may access the pricing via the IRIS system by accessing the PO record.
      iii. Nature: Price discounts are a minimum discount, and University departments may request larger discounts for large quantities or high-priced items.
      iv. Taxes: Supplier will make reasonable efforts to ensure that it accounts for the University’s tax exemption. University shall provide a certificate or other evidence reasonably satisfactory to Supplier of University’s tax-exempt status.

   b. Warranty:
      i. Warranty and Limitation of Liability: Supplier’s sole and entire liability for all defective products is limited to the express written warranty, if any, given to Supplier and its customers by the manufacturer or supplier thereof, and is subject to the conditions expressed hereafter. In no event shall University have any more (or greater) rights against Supplier than the rights Supplier has against the manufacturer or supplier. The foregoing expressed warranty is in lieu of any and all other warranties, statutory, express or implied, including without limitation the implied warranties of merchantability and fitness and any statutory or implied warranties against infringement. In no event shall Supplier be liable for any indirect, incidental, consequential, special, or punitive damages,
or for any loss of profit or use of any kind, for any cause of action, whether in contract, tort, or otherwise. University acknowledges that Supplier’s prices reflect the allocation of risk set forth herein and that Supplier would not accept University’s order without these limitations on Supplier’s liability.

ii. **Conditions of Warranty**: Supplier must be notified of defective products within 10 days after University learns of such defect. Such notice shall provide Supplier with all available information on the nature of the defect and shall state the date code and/or serial number of the product and such other relevant facts as are known to University, all as a condition to Supplier's obligation under the foregoing warranty. Supplier reserves the right to demand the return of any product claimed to be defective in order to evaluate the cause of the defect as a further condition to Supplier's warranty liability. Supplier shall not be liable under the foregoing warranty for any defective products as to which the alleged defect arises out of Supplier's compliance with any request, instruction, design change, drawing or specification furnished or imposed by University, or as to which the serial number or date code has been removed, altered, obliterated, defaced or rendered illegible. Supplier shall not be liable for any damage to products occurring in shipping or in storage, or caused by abuse, mishandling, improper installation, misuse, unauthorized repair or modification, or failure of any system in which the products are installed or integrated, or with which they are used.

iii. **Inspection by University**: As a further condition to Supplier's warranty liability, University will inspect the products at the time of delivery to University. If any products fail to pass such inspection, University will immediately notify Supplier and grant Supplier 30 days within which to inspect or examine such products, or to review the inspection data, test procedures, practices and results of University. Supplier shall have the option and alternative of (a) taking return of such products at a place designated by Supplier or (b) performing a further test at a facility designated by Supplier, at which test University at its expense shall have full opportunity to be present and to participate, with Supplier being required to accept the return of only those products which fail to pass such further test. If a claimed defect is mutually determined to be Supplier's responsibility, Supplier shall have 60 days to cure or otherwise remedy the defect, and the date of such determination shall be the first day of such 60-day period.

c. **Shipping**:

i. **Freight; Insurance**: Supplier shall make reasonable and customary arrangements to ship the goods to University, and obtain shipping insurance on the University’s behalf that covers the replacement value of the goods being shipped. Freight and insurance charges will be added to the invoice.

ii. **Title**: Title for goods will pass from Supplier to University from the time that Supplier delivers the goods to the first carrier (including a freight forwarder or consolidator) for shipment to University. When the carrier receives the goods for shipment, the University assumes all risk of loss or damages.
iii. **Shipping costs**: University is responsible for all shipping costs. Supplier will add all shipping costs to University’s invoice, unless otherwise stipulated by Supplier.

iv. **Delivery Date; Excusable Delays; Partial Delivery**: Any delivery dates specified herein are not firm and may be changed upon notice to University prior to the scheduled delivery date. With or without notice to University, the making of any delivery within the fifteen business days preceding or following the scheduled delivery date shall constitute timely delivery. Additionally, with or without notice to University, Supplier shall not be liable for any loss or damage as the result of any defaults or delays in delivery which are due to any cause beyond its control ("excusable delays"), including such matters as (but not limited to), labor strikes or slowdowns or disturbances (without regard to the merit of the employers position), the existence of any legal action or claim for infringement of property rights related to the products, or the inability of Supplier to procure products by reason of the suppliers cancellation or failure to make timely shipment of orders placed by Supplier, whether arising from the suppliers inability to procure components or materials on commercially reasonable terms, or an inability to fill orders which call for deliveries (in terms of quantities and/or shipping dates) that exceed the suppliers capacity, or from any other state of facts. Supplier may in its discretion (but in no case shall be required to) make delivery in installments, and is always free to allocate available inventory and production in such manner as it may, in its sole judgment, determine.

d. **No Cancellation; Re-stocking**: Except as set forth in paragraph 9.a below, University agrees that the orders and deliveries called for hereunder, both in terms of quantities and delivery dates, may not be canceled, rescheduled or adjusted by University, in whole or in part, without Supplier's prior written consent. University acknowledges that the products cannot be readily re-sold or otherwise disposed of on the open market, and that Supplier's damages for University’s failure of performance or improper performance cannot be readily calculated in monetary terms, or if so calculable, would be inadequate. In the event of University’s failure of performance or improper performance, and in addition to any other rights or remedies that may be available to Supplier, Supplier shall, in addition to being recompensed for work done and commitments made (including a reasonable allowance for overhead), be entitled to collect from University the greater of (a) any and all damages which Supplier may have suffered, directly or indirectly, including direct, incidental, consequential and special damages and loss of profit, or (b) a restocking fee equal to 15% of the University’s purchase price.

5) **Attachments**: The following are attached to this agreement and govern relevant transactions, as further described below:

a. Sample order form (**Attachment A**). This Attachment shall be completed and submitted by the University in accordance with its instructions, for each order under this agreement.

b. Hitachi High Technologies America, Inc. - Standard Service Agreement - Scanning / Transmission / Focused Ion Beam Electron Microscope (**Attachment B1**). This Attachment shall govern any service agreement or order between the parties regarding any such Scanning / Transmission / Focused Ion Beam Electron Microscope.
c. Hitachi High Technologies America, Inc. - Standard Service Agreement - Ion Milling Systems *(Attachment B2)*. This Attachment shall govern any service agreement or order between the parties regarding any such Ion Milling System.

d. Hitachi High Technologies America, Inc. - Three (3) And Five (5) Year Parts Guaranties - Scanning/Transmission/Focused Ion Beam Electron Microscope *(Attachment B3)*. This Attachment shall govern the supply of parts to University, and other maintenance-related matters, for any such Scanning / Transmission / Focused Ion Beam Electron Microscope that is newly purchased from Supplier, but only if the Part Number specified in the Attachment is included in the University’s Purchase Order (either expressly, or by reference to Supplier’s quotation or service proposal).

Each of Attachments B1, B2, and B3 shall apply only as to the transactions specified above for which it is specified to govern. When such an Attachment governs, if there is any conflict between (1) this agreement (which shall include, for this purpose, University’s order completed in accordance with the order form in Attachment A), and (2) the applicable Attachment B1, B2, or B3, then (i) the applicable Attachment shall control as to all matters relating to service, maintenance, and parts, and (ii) the agreement shall control as to all other matters addressed by this agreement.

6) **Site Preparation**: For products requiring installation by Supplier, University shall, at its expense, prepare the site prior to delivery and provide the required facilities, fixtures, permits, licenses, approvals, services of its technical staff, and any other assistance which Supplier requests. To the extent University fails to do so, Supplier shall have the right to assess a service charge, in a reasonable amount due to the required site preparation efforts, and add it to the amount due from University.

7) **Ownership of Intellectual Property**: No sale of products shall grant or otherwise transfer to University any right or license to any technical information incorporated in the design thereof, or to any trademark, service mark or tradename associated with the products. All drawings, plans, specifications, analyses, reports, studies and other technical documents and materials of whatever nature provided to University by Supplier are and at all times shall remain the sole and exclusive property of Supplier. Supplier does not in any way warrant or guarantee any technical information or advice provided by its staff or by anyone else. All products are subject to University’s inspection.

8) **Royalty-Free License**. In the event that any technical information received from University, or any trademark, service mark or tradename utilized by University, is or is hereafter affixed to or incorporated into the design of any product, Supplier shall, upon a default by University, be entitled to sell or otherwise dispose of its entire inventory of such products (including work-in-process) without liability or obligation to University and without regard to University’s rights afforded under any patent, trademark, copyright, trade regulation or other laws. Recognizing that any attempt by University to impede or prevent any such sale or disposition would or might well result in irreparable harm to Supplier for which damages could not be readily calculated in monetary terms, or if so calculable, would be inadequate, University agrees that upon any such attempt or threatened attempt by it Supplier shall be entitled to seek all available remedies.

9) **Term**:
   a. **Initial Term**: The initial term of this agreement begins June 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.

10) **Termination**:

a. **Order Termination by University**. The University may terminate any order placed under this agreement, solely due to a loss of appropriations or grant funds allocated to such order, by giving the Supplier notice of termination at least 30 days prior to the scheduled delivery date. Upon Supplier’s receipt of the University’s notice, the University shall have no liability or obligation to Supplier under such order.

b. **Order Termination by Supplier**. If, for any reason (such as, for example, a supplier’s failure to fill Supplier’s orders for products, or a supplier’s closing down (voluntarily or involuntarily) or ceasing or substantially ceasing its manufacturing or supplying of the products, or a change by a supplier in its price structure for selling the products to Supplier), Supplier finds it impossible or commercially unreasonable or impracticable to procure products from its supplier, then Supplier may cancel any order hereunder and terminate deliveries under such order without liability or obligation to University.

c. **Agreement Termination**. If a party materially breaches or defaults on any of its obligations to the other party hereunder, then the other party may cancel this agreement and terminate its orders or deliveries hereunder, as applicable, without liability or obligation to the other party. No such cancellation or termination shall relieve the breaching or defaulting party of its continuing obligation to perform obligations accrued before termination.

11) **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.

12) **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.

13) **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.

14) **Compliance with Law**: Both parties shall comply with applicable laws.

15) **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.

16) **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.

17) **Applicable Law; Dispute Resolution; Remedies**: This agreement and the business relationship between University and Supplier shall be construed and enforced in accordance with, and shall be governed by, the laws of the State of Tennessee with respect to validity, construction, and performance, without regard to principles of conflicts of laws. 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. All remedies of each party provided for herein, whether so expressed or not, shall be cumulative and not exclusive, and shall be in addition to any other legal or equitable remedies which may be available to such party.

18) **Assignment**: This agreement is personal to the University, and the University may not assign its rights or delegate its duties under this agreement, in whole or in part, without Supplier’s prior written consent. This agreement and all rights and duties that it creates shall be binding upon the University and its successors and permitted assigns.

19) **Authenticity of Orders**: Supplier shall make reasonable efforts to confirm the authenticity of orders from individuals claiming to be University employees. Supplier may contact the Office of Procurement Services at any time for assistance in verifying whether an order is authentic.
20) Waiver of Claims:
   a. **Respondent’s Intent**: Supplier intends to protect the University’s employees from personal liability in connection with the parties’ performance of this agreement. Accordingly, Supplier intends to waive and release any claims against the University’s employees in connection with the parties’ performance of this agreement.
   
b. **Irrevocable Waiver**: Supplier hereby irrevocably waives any claims against the University’s employees or former employees, in connection with the parties’ performance of this agreement. Supplier hereby covenants not to sue University employees or former employees in their individual capacity, in connection with the parties’ performance of this agreement. 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.

21) 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/)

22) 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:**

1375 North 28th Avenue, P.O. Box 612208  
Dallas, TX 75261-2208  
ATTN: General Manager, Nanotechnology Systems Division

**University:**

The University of Tennessee  
5723 Middlebrook Pike
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.

23) **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.

24) **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.

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

26) **Export Control**: University shall comply with all applicable laws governing export control, and acknowledges that the sale, transfer, export, or re-export of products, software, or technical data (collectively, “Products”) supplied by Supplier may require a United States government export license, and that transfers to certain countries, entities, and individuals are prohibited under United States law. Further, University shall not, directly or indirectly, sell, transfer, deliver, send, export, or re-export any Product in violation of any of the export control laws or regulations of any government of a country, including the United States, asserting jurisdiction over the parties and transactions involving Products. University acknowledges that Supplier will rely on this paragraph in supplying Products to University.

27) **Nature of Parties**: The parties intend for Supplier to be an independent contractor. Accordingly, Supplier is responsible for reporting and payment of all taxes arising from Supplier’s income, operations, and employment of its personnel, and University shall not be responsible for withholding, reporting, or payment of any such taxes.

28) **Severability**: The parties intend as follows:
   a. that if any provision of this agreement is held, by a court of competent jurisdiction, to be unenforceable or otherwise invalid, then that provision will be modified to the minimum extent necessary to make it enforceable and valid, unless that modification is not permitted by law, in which case that provision will be disregarded;
   b. that if such an unenforceable or invalid 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 such unenforceable or invalid provision will remain as written in any circumstances other than those in which the provision is held to be unenforceable or invalid.

29) **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 that either party’s website, mobile applications, or other platforms
contain click-wrap, browse-wrap, or shrink-wrap terms and conditions, such party states that such terms and conditions do not and shall not apply to the other party.

Agreed:

University: [DocuSigned by: Blake Reagan]
Signature: Blake Reagan
Name: Blake Reagan
Title: Dir. of Procurement Services
Date: 8/22/2016 | 20:36:45 EDT

Supplier:
Signature: [Signature]
Name: Phil Bryson
Title: VP of GM
Date: 26 Aug 16
Hitachi High Technologies America, Inc. ("HTA") Order Form for University PO #

This order form serves as official confirmation of the attached order. *This order form, including any attachments, is governed by University purchase order #.*

**Process:**

1. Department must obtain all necessary internal approvals and then email Blake Reagan ([breagan@utk.edu](mailto:breagan@utk.edu)) with the quote and documentation showing internal approvals.

2. The Office of Procurement Services will sign this order form via DocuSign after: (A) authenticating the identity of the requestor, and (B) verifying that the department wants to proceed.

3. HTA must send invoices to the department address listed below; do not send to the Office of Procurement Services.

4. Department will pay all invoices against PO#.

5. UT to send this order form to: [emdwebsite@hitachi-hta.com](mailto:emdwebsite@hitachi-hta.com)

**Reference HTA Quote #:** UT-Enter Hitachi Quote #.

☐ Department authorization: Attached.

☐ Tax exemption certificate: Attached.

**Ship-to address:**

Click or tap here to enter text.

**Bill-to address:**

Click or tap here to enter text.

**UT Authorized Signature:**

Procurement Services: ________________________________

Name: 

Title: 

Date:
This Service Agreement (this “Agreement”) is entered into as of the date last written in the signature block on Page 1 between Hitachi High Technologies America, Inc. (“HTA”), with its headquarters located at 10 North Martingale Road, Suite 500, Schaumburg, Illinois 60173, and the “Subscriber” as shown in the “Proposed to” block on Page 1 of this Agreement.

The parties hereby agree as follows:

1.0 Service. HTA agrees, during the term of service specified on Page 1 of this Agreement, to inspect, repair, and maintain the items of equipment specified on Page 1 (the “Equipment”) according to the terms of this Agreement, which Subscriber acknowledges it has read and to which Subscriber agrees. HTA will repair or replace any component part of the Equipment at no additional cost to Subscriber, except as described in Section 3.6, if said repair or replacement is deemed necessary in the judgment of HTA. Labor required to perform such services will be rendered during the hours specified in the Service Plan selected by Subscriber as described in the Service Plans section of this Agreement. Labor required after such hours will be billed to the Subscriber at HTA’s standard overtime rates (less 10% discount) in effect at the time such labor is rendered.

2.0 Service Plans. Subscriber may choose one of the following three Service Plans and Subscriber’s election shall be designated on Page 1 of this Agreement:

<table>
<thead>
<tr>
<th>Service Plans</th>
<th>Option 1</th>
<th>Option 2</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-site Emergency</td>
<td>Unlimited</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Response Period</td>
<td>Monday-Friday, excluding HTA holidays</td>
<td>Monday-Friday, excluding HTA holidays</td>
<td>Monday-Friday, excluding HTA holidays</td>
</tr>
<tr>
<td>Response Hours</td>
<td>8 a.m. – 5 p.m.</td>
<td>8 a.m. – 5 p.m.</td>
<td>8 a.m. – 5 p.m.</td>
</tr>
<tr>
<td>Response time</td>
<td>48-hours</td>
<td>48-hours</td>
<td>48-hours</td>
</tr>
<tr>
<td>Preventive</td>
<td>2 per year</td>
<td>1 per year</td>
<td>1 per year</td>
</tr>
<tr>
<td>Maintenance Service</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Parts</td>
<td>Included *</td>
<td>Included *</td>
<td>Vacuum roughing pump oil and filter only! Blanket PO or Credit Card, in advance, required for ALL parts purchases.</td>
</tr>
</tbody>
</table>

*Except as described in Section 3.6

HTA will make commercially reasonable efforts to respond within the timeframes set forth in the Service Plan selected by Subscriber.

3.0 General Service Provisions

3.1 Emergency Service is that service to be performed where a breakdown has occurred through normal usage of the Equipment and Subscriber has notified HTA of that breakdown. The replacement of a consumable item does not constitute Emergency Service. Emergency Service repairs will be performed free-of-charge to Subscriber, except as provided in Section 3.6.
3.2 **On-Site Emergency Service Response Time** is the length of time within which the HTA Service Engineer should arrive on-site after receipt of the first request by Subscriber for Emergency Service.

3.3 **Preventive Maintenance.** HTA agrees to provide comprehensive preventive maintenance inspections and service designed to keep the Equipment in a condition ready for ordinary use at intervals based on the contract plan selected by mutual agreement with Subscriber. The cost of preventive maintenance inspections and service is included in the cost of this Agreement except as provided in Section 3.6. Routine replacement of parts shall be as specified below, and other parts will be replaced if deemed necessary in the judgment of the HTA Service Engineer. Preventive maintenance inspections and service may include the following, as determined by the HTA Service Engineer:

- Cleaning of the instrument;
- Replacement of parts under Option 1 and Option 2 Plans;
- Inspection and replacement of vacuum pump oils, seals and filters;
- Inspection and replacement of vacuum hoses, air lines and water lines;
- Inspection and adjustment, if necessary, of all systems; and
- Column alignment and inspection of image.

3.4 **Parts.** All parts, except those listed in Section 3.6, will be provided and replaced or repaired free-of-charge if, in the determination of the HTA Service Engineer, such replacement or repair is necessary to keep the Equipment in a condition ready for ordinary use. All parts that have been replaced become the property of HTA. Subscriber is entitled to a 10% discount off the standard selling price for the parts listed in Section 3.6 in effect at the time such parts are replaced.

3.5 **Subscriber Responsibilities.** Subscriber shall have the following obligations under this Agreement:

A) The Subscriber shall be responsible for routine operation and the User Preventive Maintenance described in the maintenance section of the Equipment’s instruction manual(s).

B) The Subscriber shall promptly advise the HTA Service Engineer of any unsafe or hazardous condition near the Equipment or under which the Equipment has been operated.

C) The Subscriber shall supply and make available to the HTA Service Engineer the following materials and equipment to support maintenance and repair procedures:

1) Ultrasonic Cleaner - For cleaning parts;
2) Air Spray - For blowing dust away;
3) Optical Microscope - For checking specimens and/or parts.
4) SF6 Gas (if applicable to the equipment).

D) For the Option 3 Plan, Subscriber must provide a blanket purchase order or provide a valid credit card number, at the time of contract purchase or renewal, for the purchase of ALL replacement parts, except vacuum roughing pump oil and oil mist filters, during the period of this Agreement.

3.6 **Exclusions.** The following maintenance, service, parts, and Equipment are expressly excluded from coverage by this Agreement:
HITACHI HIGH TECHNOLOGIES AMERICA, INC.
STANDARD SERVICE AGREEMENT
SCANNING / TRANSMISSION / FOCUSED ION BEAM
ELECTRON MICROSCOPE

A) HTA assumes no liability and has no responsibility under this Agreement or otherwise for the replacement or repair of Equipment, components, or parts altered, modified, replaced, repaired, moved, relocated, or connected by mechanical or electrical means to non-Hitachi manufactured or supplied equipment or software by Subscriber or a third-party without authorization from HTA. Any such Equipment, components, or parts shall not be covered by this Agreement.

B) HTA assumes no liability and has no responsibility under this Agreement or otherwise for the replacement or repair of Equipment, components, or parts necessitated by abuse, misuse, or any external cause including, but not limited to, fire, water or water failure, electrical power interruption, inadequate air conditioning, heating, or humidity control, inadequate operating environment, explosion, building collapse, acts of God, civil disorders, or any other causes beyond HTA’s control.

C) Consumable parts, including, but not limited to emission sources (tips), aperture strips, and specimen stubs, are not covered by this Agreement. Additionally, the following shall apply:
   1. Thermal FE-SEM: Tips and aperture strips are not covered by this Agreement, unless specifically included as part of this Agreement.
   2. Cold Cathode FE-SEM: Tips and aperture strips are covered by this Agreement

D) Paint and exterior cabinet panels are not covered by this Agreement.

E) Equipment accessories, including, but not limited to, energy dispersive x-ray microanalysis (EDX) systems, wavelength dispersive x-ray (WDX) systems, image intensifier systems, water chillers and anti-vibration tables, are not covered by this Agreement unless specifically included as part of this Agreement.

F) Updates and upgrades to the Equipment’s operating software are not covered by this Agreement.

G) Relocation of Equipment and training of new operators are not covered by this Agreement and will be billed at HTA’s standard billable rates (less 10% discount).

H) The disposal of any hazardous waste materials is the responsibility of the Subscriber and is not covered by this Agreement.

I) High voltage transformer assemblies are excluded from parts coverage under the Option 2 Service Plan.

J) All parts, except for vacuum roughing pump oil and filters, are excluded from parts coverage under the Option 3 Service Plan.

4.0 Service Call Procedures. All requests for service must be placed to HTA’s Customer Support Center at the toll-free number (800) 253-3053 during the hours of coverage. HTA’s primary Service Engineer or alternate will be promptly notified of Subscriber’s request and will attempt to call Subscriber back within twenty-four (24) hours to advise Subscriber of the estimated on-site arrival time.
5.0 Cost and Billing Options

5.1 The cost for HTA’s Services under this Agreement shall vary according to the Service Plan elected by Subscriber and the Equipment to be maintained. Subscriber’s cost is specified on Page 1. The cost may be revised from time to time to reflect required governmental taxes.

5.2 Subscriber may elect either annual or quarterly billing under this Agreement. In either event, HTA will transmit an invoice to Subscriber and payment will be due in advance of the service period covered by such invoice. Subscriber’s billing election will be specified on Page 1.

5.3 A change of service coverage from Option 3 to Option 1 or Option 2, or from Option 2 to Option 1, during the term of this agreement or at time of renewal of this Agreement will require an inspection of the Equipment to verify that the Equipment is eligible for coverage under Option 1 or Option 2 Plan. Labor to perform the inspection will be provided at no charge to the Subscriber. Any replacement parts previously ordered under Option 2 or Option 3 coverage remain subject to the Option 2 or Option 3 Plan terms for purchase of parts.

6.0 Term and Termination. This Agreement shall become effective on the first day of the term of service specified on Page 1 and shall expire on the last day of such term of service. This Agreement may be canceled by either party upon sixty (60) days’ written notice. Upon cancellation, HTA, if appropriate under the circumstances, shall refund to Subscriber a pro rata portion of any charge paid hereunder for the balance of the term of service specified in Page 1. Subscriber agrees to return to HTA all diagnostic materials and maintenance aids, including all copies thereof, within thirty (30) days after termination of this Agreement.

7.0 General Provisions

7.1 Payment Terms. In the event Subscriber elects annual billing, the full amount due from Subscriber under this Agreement will be invoiced upon execution of this Agreement and is due thirty (30) days from the date of the invoice. In the event Subscriber elects quarterly billing, quarterly invoices will be issued to Subscriber at least thirty (30) days in advance of the service period covered by such invoice and are due by the start of the service period. If Subscriber fails to pay any amount hereunder when due, HTA may deny or suspend provision of service, and that amount shall thereafter bear a late charge until paid in full, which late charge shall be computed at the rate of ten percent (10%) per annum; provided however, that the late charge shall at no time exceed the maximum amount permitted under applicable law. If Subscriber pays any amount hereunder when a late charge has accrued, that amount shall be applied first against that late charge. A 2% discount will apply to the amount due if HTA receives Subscriber’s Purchase Order for the Agreement prior to the Agreement start date.

7.2 Warranty. HTA warrants that it shall provide service during the term of this Agreement in accordance with the provisions of this Agreement.

7.3 Disclaimer and Limitation of Liability.

THE FOREGOING EXPRESS WARRANTY BY HTA IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS, AND ALSO IS IN LIEU OF ANY AND ALL OBLIGATIONS OR LIABILITY OF HTA FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, INDIRECT,
CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT, OR RESULTING FROM LOSS OF USE, DATA, PROFITS, OR BUSINESS OPPORTUNITIES, EVEN IF HTA WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

HTA’S MAXIMUM TOTAL LIABILITY FOR A BREACH OF WARRANTY SHALL BE LIMITED TO A REFUND OF THE TOTAL PRICE PAID BY SUBSCRIBER FOR THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT.

SUBSCRIBER ACKNOWLEDGES THAT THE COST FOR HTA’S SERVICES UNDER THIS AGREEMENT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT HTA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

7.4 [Deleted]

7.5 **Equipment Eligibility.** All Equipment to be covered under this Agreement must be in a condition ready for ordinary use as determined by HTA prior to the beginning of coverage under this Agreement. Equipment that is currently covered by another HTA service agreement or a new equipment factory warranty shall be deemed to be in such condition. Equipment that has not been covered by another HTA service agreement or new equipment factory warranty for a period of thirty (30) days or longer must pass a pre-service contract inspection by HTA charged at HTA’s then-current standard billable rates. This pre-service contract inspection shall be effective for thirty (30) days from the completion date of that inspection, and in order for the Equipment to be eligible for coverage, this Agreement must be executed during such thirty (30) day period.

7.6 **Confidential Information.** HTA and Subscriber each understand that certain materials and information may be made available to the other party that relate to the Equipment or the services provided by HTA in connection with the performance of this Agreement (“Confidential Information”). Each party agrees (i) not to copy, disclose or disseminate, in any way or form, any Confidential Information (as defined below) of the other party to anyone except to such party’s employees and affiliates who have a need to know based on the subject matter of this Agreement, (ii) to use any Confidential Information of the other party only for purposes of performing its obligations under this Agreement, and (iii) to treat all Confidential Information of the other party with the same degree of care that it uses with its own information of like importance, but in no event less than a reasonable degree of care. For purposes hereof, “Confidential Information” means any information regardless of form that (i) a party to this Agreement (each, a “Discloser”) designates as “confidential” or “proprietary” to the party receiving such information (“Recipient”) or, (ii) which, (a) is disclosed in writing (including electronically) and stamped or otherwise conspicuously and clearly marked by the Discloser as “CONFIDENTIAL” at the time of disclosure to the Recipient, or (b) is disclosed orally if so identified at the time of disclosure and if within thirty (30) business days after the oral disclosure Recipient is furnished by Discloser with a writing which describes the information so furnished and clearly states that it is confidential. HTA’s Confidential Information includes, but is not limited to, service manuals, parts manuals, circuit diagrams, technical drawings, service memoranda, and product or service specifications. These obligations shall not apply to any Confidential Information that (i) Discloser has consented in writing that Recipient may disclose; (ii) as proven by Recipient’s records, is in the possession of the Recipient prior to its receipt of the Confidential Information from the Discloser, or is independently developed by Recipient without use.
or reference to the Confidential Information, (iii) is or becomes publicly available through no fault of Recipient, (iv) is lawfully disclosed to Recipient by a third-party without restriction on disclosure, (v) has been furnished by Discloser to a non-party on an unrestricted basis; or (vi) must be disclosed by law or court order; provided however, that Recipient shall immediately notify Discloser of the receipt of such process and afford Discloser full opportunity to quash or otherwise resist the same. This section 7.6 does not apply to disclosures that the Subscriber makes pursuant to law or to the State of Tennessee.

7.7 Export Control. Subscriber shall not commit any act or request HTA to commit any act which would violate either the letter or spirit of the export control laws or regulations of the United States, or other export control laws, rules or regulations, as applicable, and Subscriber shall take any action reasonably within its capacity to assure compliance with such laws, rules, or regulations.

7.8 Insurance. HTA maintains the following insurance applicable to its performance of this Agreement:

(A) Commercial General Liability
   General Aggregate: $2,000,000
   Products/Completed Operations: $2,000,000
   Personal & Advertising Injury: $1,000,000
   Each Occurrence: $1,000,000
   Fire Damage: $1,000,000
   Medical Expense: $25,000

(B) Automobile Liability
   Combined Single Limit: $1,000,000

(C) Workers’ Compensation and Employer’s Liability
   Workers’ Compensation: Statutory
   Employer’s Liability:
      $1,000,000 Each Accident
      $1,000,000 Disease – Policy Limit
      $1,000,000 Disease – Each Employee

7.9 Waiver. A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

7.10 Assignment. A party may not assign or delegate any of its rights or obligations arising under this Agreement, whether voluntarily or by operation of law, without the express written consent of the other party, which shall not be unreasonably delayed or withheld, and any such purported assignment or delegation shall be void and without effect. This Agreement shall be binding upon and inure to the benefit of the successors or assigns of the parties hereto and, to the extent any successor or assign is not bound by operation of law, each party shall cause such successor or assign to expressly agree in writing to be bound by this Agreement.

7.11 Relationship of the Parties. The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct or control the day-to-day activities of the other; constitute the parties as partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking; or
allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

7.12 Governing Law. This Agreement and the performance of all obligations hereunder shall be governed by and construed in accordance with the laws of the State of Tennessee, without application of any choice of law rules.

7.13 Force Majeure. HTA shall not be in breach or default under this Agreement and shall not be liable for any damages whatsoever because of any failure to perform in accordance with this Agreement if such failure arises from or in connection with any cause or condition beyond HTA’s control, including, but not limited to, acts of God, acts of government, civil unrest or commotion, fires, floods, epidemics, quarantines, restrictions, labor disputes or strikes, embargoes, inability to obtain parts or supplies or transportation for whatever reason, acts or omissions of suppliers or carriers or warehouses, or any and all other causes beyond HTA’s control.

7.14 Entire Agreement. This Agreement constitutes the sole and complete agreement between HTA and Subscriber concerning the subject matter hereof and supersedes any and all prior agreements or understandings, whether written or oral. No representation, promise, term, or condition not expressly set forth in this Agreement or in another writing executed by a duly authorized officer or signatory of each of the parties shall be binding on either party.
HITACHI HIGH TECHNOLOGIES AMERICA, INC.
STANDARD SERVICE AGREEMENT
ION MILLING SYSTEMS

This Service Agreement (this “Agreement”) is entered into as of the date last written in the signature block on Page 1 between Hitachi High Technologies America, Inc. (“HTA”), with its headquarters located at 10 North Martingale Road, Suite 500, Schaumburg, Illinois 60173, and the “Subscriber” as shown in the “Proposed to” block on Page 1 of this Agreement.

The parties hereby agree as follows:

1.0 Service. HTA agrees, during the term of service specified on Page 1 of this Agreement, to inspect, repair, and maintain the items of equipment specified on Page 1 (the “Equipment”) according to the terms of this Agreement, which Subscriber acknowledges it has read and to which Subscriber agrees. HTA will repair or replace any component part of the Equipment at no additional cost to Subscriber, except as described in Section 3.6, if said repair or replacement is deemed necessary in the judgment of HTA. Labor required to perform such services will be rendered during the hours specified in the Service Plan selected by Subscriber as described in the Service Plans section of this Agreement. Labor required after such hours will be billed to the Subscriber at HTA’s standard overtime rates (less 10% discount) in effect at the time such labor is rendered.

2.0 Service Plans. Subscriber may choose one of the following three Service Plans and Subscriber’s election shall be designated on Page 1 of this Agreement:

<table>
<thead>
<tr>
<th>Service Plans</th>
<th>Option 1</th>
<th>Option 3</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-site Emergency Service</td>
<td>Unlimited</td>
<td>Unlimited</td>
</tr>
<tr>
<td>Response Period</td>
<td>Monday-Friday, excluding HTA holidays</td>
<td>Monday-Friday, excluding HTA holidays</td>
</tr>
<tr>
<td>Response Hours</td>
<td>8 a.m. – 5 p.m.</td>
<td>8 a.m. – 5 p.m.</td>
</tr>
<tr>
<td>Response time</td>
<td>48-hours</td>
<td>48-hours</td>
</tr>
<tr>
<td>Preventive Maintenance Service</td>
<td>2 per year</td>
<td>1 per year</td>
</tr>
<tr>
<td>Parts</td>
<td>Included *</td>
<td>Vacuum roughing pump oil and filter only! Blanket PO or Credit Card, in advance, required for ALL parts purchases.</td>
</tr>
</tbody>
</table>

* Except as described in Section 3.6

HTA will make commercially reasonable efforts to respond within the timeframes set forth in the Service Plan selected by Subscriber.

3.0 General Service Provisions

3.1 Emergency Service is that service to be performed where a breakdown has occurred through normal usage of the Equipment and Subscriber has notified HTA of that breakdown. The replacement of a consumable item does not constitute Emergency Service. Emergency Service repairs will be performed free-of-charge to Subscriber, except as provided in Section 3.6.
3.2 **On-Site Emergency Service Response Time** is the length of time within which the HTA Service Engineer should arrive on-site after receipt of the first request by Subscriber for Emergency Service.

3.3 **Preventive Maintenance.** HTA agrees to provide comprehensive preventive maintenance inspections and service designed to keep the Equipment in a condition ready for ordinary use at intervals based on the contract plan selected by mutual agreement with Subscriber. The cost of preventive maintenance inspections and service is included in the cost of this Agreement except as provided in Section 3.6. Routine replacement of parts shall be as specified below, and other parts will be replaced if deemed necessary in the judgment of the HTA Service Engineer. Preventive maintenance inspections and service may include the following, as determined by the HTA Service Engineer:

- Cleaning of the instrument;
- Replacement of parts under Option 1 Plan;
- Inspection and replacement of vacuum pump oils, seals and filters;
- Inspection and replacement of vacuum hoses, and air lines;
- Inspection and adjustment, if necessary, of all systems; and
- Confirmation of specified milling rates.

3.4 **Parts.** All parts, except those listed in Section 3.6, will be provided and replaced or repaired free-of-charge if, in the determination of the HTA Service Engineer, such replacement or repair is necessary to keep the Equipment in a condition ready for ordinary use. All parts that have been replaced become the property of HTA. Subscriber is entitled to a 10% discount off the standard selling price for the parts listed in Section 3.6 in effect at the time such parts are replaced.

3.5 **Subscriber Responsibilities.** Subscriber shall have the following obligations under this Agreement:

A) The Subscriber shall be responsible for routine operation and the User Preventive Maintenance described in the maintenance section of the Equipment’s instruction manual(s).

B) The Subscriber shall promptly advise the HTA Service Engineer of any unsafe or hazardous condition near the Equipment or under which the Equipment has been operated.

C) The Subscriber shall supply and make available to the HTA Service Engineer the following materials and equipment to support maintenance and repair procedures:

1) Ultrasonic Cleaner - For cleaning parts;
2) Solvents, metal polish, sandpaper – For cleaning parts;
3) Air Spray - For blowing dust away;
4) Optical Microscope - For checking specimens and/or parts;
5) Argon Gas.

D) For the Option 3 Plan, Subscriber must provide a blanket purchase order or provide a valid credit card number, at the time of contract purchase or renewal, for the purchase of ALL replacement parts, except vacuum roughing pump oil and oil mist filters, during the period of this Agreement.
3.6 **Exclusions.** The following maintenance, service, parts, and Equipment are expressly excluded from coverage by this Agreement:

A) HTA assumes no liability and has no responsibility under this Agreement or otherwise for the replacement or repair of Equipment, components, or parts altered, modified, replaced, repaired, moved, relocated, or connected by mechanical or electrical means to non-Hitachi manufactured or supplied equipment or software by Subscriber or a third-party without authorization from HTA. Any such Equipment, components, or parts shall not be covered by this Agreement.

B) HTA assumes no liability and has no responsibility under this Agreement or otherwise for the replacement or repair of Equipment, components, or parts necessitated by abuse, misuse, or any external cause including, but not limited to, fire, water or water failure, electrical power interruption, inadequate air conditioning, heating, or humidity control, inadequate operating environment, explosion, building collapse, acts of God, civil disorders, or any other causes beyond HTA’s control.

C) Consumable parts are not covered by this Agreement. These parts are outlined in the instruction manual.

D) Paint and exterior cabinet panels are not covered by this Agreement.

E) Updates and upgrades to the Equipment’s operating software are not covered by this Agreement.

F) Relocation of Equipment and training of new operators are not covered by this Agreement and will be billed at HTA’s standard billable rates (less 10% discount).

G) The disposal of any hazardous waste materials is the responsibility of the Subscriber and is not covered by this Agreement.

H) High voltage transformer assemblies are excluded from parts coverage under the Option 2 Service Plan.

I) All parts, except for vacuum roughing pump oil and filters, are excluded from parts coverage under the Option 3 Service Plan.

4.0 **Service Call Procedures.** All requests for service must be placed to HTA’s Customer Support Center at the toll-free number (800) 253-3053 during the hours of coverage. HTA’s primary Service Engineer or alternate will be promptly notified of Subscriber’s request and will attempt to call Subscriber back within twenty-four (24) hours to advise Subscriber of the estimated on-site arrival time.

5.0 **Cost and Billing Options**

5.1 The cost for HTA’s Services under this Agreement shall vary according to the Service Plan elected by Subscriber and the Equipment to be maintained. Subscriber’s cost is specified on Page 1. The cost may be revised from time to time to reflect required governmental taxes.
5.2 Subscriber may elect either annual or quarterly billing under this Agreement. In either event, HTA will transmit an invoice to Subscriber and payment will be due in advance of the service period covered by such invoice. Subscriber’s billing election will be specified on Page 1.

5.3 A change of service coverage from Option 3 to Option 1 or Option 2, or from Option 2 to Option 1, during the term of this agreement or at time of renewal of this Agreement will require an inspection of the Equipment to verify that the Equipment is eligible for coverage under Option 1 or Option 2 Plan. Labor to perform the inspection will be provided at no charge to the Subscriber. Any replacement parts previously ordered under Option 2 or Option 3 coverage remain subject to the Option 2 or Option 3 Plan terms for purchase of parts.

6.0 Term and Termination. This Agreement shall become effective on the first day of the term of service specified on Page 1 and shall expire on the last day of such term of service. This Agreement may be canceled by either party upon sixty (60) days’ written notice. Upon cancellation, HTA, if appropriate under the circumstances, shall refund to Subscriber a pro rata portion of any charge paid hereunder for the balance of the term of service specified in Page 1. Subscriber agrees to return to HTA all diagnostic materials and maintenance aids, including all copies thereof, within thirty (30) days after termination of this Agreement.

7.0 General Provisions

7.1 Payment Terms. In the event Subscriber elects annual billing, the full amount due from Subscriber under this Agreement will be invoiced upon execution of this Agreement and is due thirty (30) days from the date of the invoice. In the event Subscriber elects quarterly billing, quarterly invoices will be issued to Subscriber at least thirty (30) days in advance of the service period covered by such invoice and are due by the start of the service period. If Subscriber fails to pay any amount hereunder when due, HTA may deny or suspend provision of service, and that amount shall thereafter bear a late charge until paid in full, which late charge shall be computed at the rate of ten percent (10%) per annum; provided however, that the late charge shall at no time exceed the maximum amount permitted under applicable law. If Subscriber pays any amount hereunder when a late charge has accrued, that amount shall be applied first against that late charge. A 2% discount will apply to the amount due if HTA receives Subscriber’s Purchase Order for the Agreement prior to the Agreement start date.

7.2 Warranty. HTA warrants that it shall provide service during the term of this Agreement in accordance with the provisions of this Agreement.

7.3 Disclaimer and Limitation of Liability.

THE FOREGOING EXPRESS WARRANTY BY HTA IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS, AND ALSO IS IN LIEU OF ANY AND ALL OBLIGATIONS OR LIABILITY OF HTA FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OR PERFORMANCE OF THE EQUIPMENT, OR RESULTING FROM LOSS OF USE, DATA, PROFITS, OR
BUSINESS OPPORTUNITIES, EVEN IF HTA WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

HTA’S MAXIMUM TOTAL LIABILITY FOR A BREACH OF WARRANTY SHALL BE LIMITED TO A REFUND OF THE TOTAL PRICE PAID BY SUBSCRIBER FOR THE SERVICES TO BE PROVIDED UNDER THIS AGREEMENT.

SUBSCRIBER ACKNOWLEDGES THAT THE COST FOR HTA’S SERVICES UNDER THIS AGREEMENT REFLECTS THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT HTA WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

7.4 [Deleted].

7.5 **Equipment Eligibility.** All Equipment to be covered under this Agreement must be in a condition ready for ordinary use as determined by HTA prior to the beginning of coverage under this Agreement. Equipment that is currently covered by another HTA service agreement or a new equipment factory warranty shall be deemed to be in such condition. Equipment that has not been covered by another HTA service agreement or new equipment factory warranty for a period of thirty (30) days or longer must pass a pre-service contract inspection by HTA charged at HTA’s then-current standard billable rates. This pre-service contract inspection shall be effective for thirty (30) days from the completion date of that inspection, and in order for the Equipment to be eligible for coverage, this Agreement must be executed during such thirty (30) day period.

7.6 **Confidential Information.** HTA and Subscriber each understand that certain materials and information may be made available to the other party that relate to the Equipment or the services provided by HTA in connection with the performance of this Agreement (“Confidential Information”). Each party agrees (i) not to copy, disclose or disseminate, in any way or form, any Confidential Information (as defined below) of the other party to anyone except to such party’s employees and affiliates who have a need to know based on the subject matter of this Agreement, (ii) to use any Confidential Information of the other party only for purposes of performing its obligations under this Agreement, and (iii) to treat all Confidential Information of the other party with the same degree of care that it uses with its own information of like importance, but in no event less than a reasonable degree of care. For purposes hereof, “Confidential Information” means any information regardless of form that (i) a party to this Agreement (each, a “Discloser”) designates as “confidential” or “proprietary” to the party receiving such information (“Recipient”) or, (ii) which, (a) is disclosed in writing (including electronically) and stamped or otherwise conspicuously and clearly marked by the Discloser as “CONFIDENTIAL.” at the time of disclosure to the Recipient, or (b) is disclosed orally if so identified at the time of disclosure and if within thirty (30) business days after the oral disclosure Recipient is furnished by Discloser with a writing which describes the information so furnished and clearly states that it is confidential. HTA’s Confidential Information includes, but is not limited to, service manuals, parts manuals, circuit diagrams, technical drawings, service memoranda, and product or service specifications. These obligations shall not apply to any Confidential Information that (i) Discloser has consented in writing that Recipient may disclose; (ii) as proven by Recipient’s records, is in the possession of the Recipient prior to its receipt of the Confidential Information from the Discloser, or is independently developed by Recipient without use or reference to the Confidential Information, (iii) is or becomes publicly available through no fault of Recipient, (iv) is lawfully disclosed to Recipient by a third-party without restriction on disclosure, (v) has been furnished by Discloser to a non-party on an unrestricted basis; or (vi) must be disclosed by
law or court order; provided however, that Recipient shall immediately notify Discloser of the receipt of such process and afford Discloser full opportunity to quash or otherwise resist the same. This section 7.6 does not apply to disclosures that the Subscriber makes pursuant to law or to the State of Tennessee.

7.7 **Export Control.** Subscriber shall not commit any act or request HTA to commit any act which would violate either the letter or spirit of the export control laws or regulations of the United States, or other export control laws, rules or regulations, as applicable, and Subscriber shall take any action reasonably within its capacity to assure compliance with such laws, rules, or regulations.

7.8 **Insurance.** HTA maintains the following insurance applicable to its performance of this Agreement:

(A) Commercial General Liability
- General Aggregate: $2,000,000
- Products/Completed Operations: $2,000,000
- Personal & Advertising Injury: $1,000,000
- Each Occurrence: $1,000,000
- Fire Damage: $1,000,000
- Medical Expense: $25,000

(B) Automobile Liability
- Combined Single Limit: $1,000,000

(C) Workers’ Compensation and Employer’s Liability
- Workers’ Compensation: Statutory
- Employer’s Liability: $1,000,000 Each Accident
  $1,000,000 Disease – Policy Limit
  $1,000,000 Disease – Each Employee

7.9 **Waiver.** A waiver of a breach or default under this Agreement shall not be a waiver of any other or subsequent breach or default. Failure or delay by either party to enforce compliance with any term or condition of this Agreement shall not constitute a waiver of such term or condition.

7.10 **Assignment.** A party may not assign or delegate any of its rights or obligations arising under this Agreement, whether voluntarily or by operation of law, without the express written consent of the other party, which shall not be unreasonably delayed or withheld, and any such purported assignment or delegation shall be void and without effect. This Agreement shall be binding upon and inure to the benefit of the successors or assigns of the parties hereto and, to the extent any successor or assign is not bound by operation of law, each party shall cause such successor or assign to expressly agree in writing to be bound by this Agreement.

7.11 **Relationship of the Parties.** The relationship of the parties established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to give either party the power to direct or control the day-to-day activities of the other; constitute the parties as partners, joint ventures, co-owners, or otherwise as participants in a joint or common undertaking; or allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.
7.12 **Governing Law.** This Agreement and the performance of all obligations hereunder shall be governed by and construed in accordance with the laws of the State of Tennessee, without application of any choice of law rules.

7.13 **Force Majeure.** HTA shall not be in breach or default under this Agreement and shall not be liable for any damages whatsoever because of any failure to perform in accordance with this Agreement if such failure arises from or in connection with any cause or condition beyond HTA’s control, including, but not limited to, acts of God, acts of government, civil unrest or commotion, fires, floods, epidemics, quarantines, restrictions, labor disputes or strikes, embargoes, inability to obtain parts or supplies or transportation for whatever reason, acts or omissions of suppliers or carriers or warehouses, or any and all other causes beyond HTA’s control.

7.14 **Entire Agreement.** This Agreement constitutes the sole and complete agreement between HTA and Subscriber concerning the subject matter hereof and supersedes any and all prior agreements or understandings, whether written or oral. No representation, promise, term, or condition not expressly set forth in this Agreement or in another writing executed by a duly authorized officer or signatory of each of the parties shall be binding on either party.
HITACHI HIGH TECHNOLOGIES AMERICA, INC.
THREE (3) AND FIVE (5) YEAR PARTS GUARANTEES
SCANNING/TRANSMISSION/FOCUSED ION BEAM ELECTRON MICROSCOPE

This guaranty applies to all new SEM’s, TEM’s and FIB’s purchased from Hitachi High Technologies America, Inc. (“HTA”) after August 1, 2010, where P/N EMD-3000 is included in the Purchase Order.

1.0 Parts Guaranty. With each new, applicable purchase of the eligible items of equipment (the “Equipment”), HTA will provide free replacement of all spare parts, defined below in section 2.0 (“the Parts”), which fail during the applicable covered period.

1.1 Three (3) Year Parts Guaranty: Parts will be provided free of charge for the first three (3) years after installation by HTA of the Equipment as follows:

1.1.1 1st Year: Parts, labor, and travel provided free of charge.
1.1.2 2nd ~ 3rd Years: Parts provided free of charge, labor and travel payable at HTA’s then current standard billable rates. (Customer may purchase an Option 3 Maintenance Agreement for the Equipment to extend the 1st year program and eliminate any unexpected labor or travel expenses.)

1.2 Five (5) Year Parts Guaranty: Parts will be provided free of charge for a full five (5) years after installation by HTA of the Equipment:

1.2.1 1st Year: Parts, labor, and travel provided free of charge.
1.2.2 2nd ~ 5th Years: Parts, labor, and travel provided free of charge with the purchase of an Option 3 Maintenance Agreement, which must remain in affect from the start of the 2nd year after installation by HTA of the Equipment through the 5th year.

2.0 Parts. All parts, except those listed in Section 2.1, will be provided free-of-charge if, in the determination of the HTA Service Engineer, such replacement or repair is necessary to keep the Equipment in a condition ready for ordinary use. All parts that have been replaced become the property of HTA. HTA at its sole discretion may utilize new or refurbished parts performing as new to restore the system to specification. Labor required to perform such services will be rendered during normal HTA business hours.

2.1 Exclusions. The following parts are expressly excluded from this guaranty:

2.1.1 HTA assumes no liability and has no responsibility for the replacement or repair of Parts altered, modified, replaced, repaired, moved, relocated, or connected by mechanical or electrical means to non-Hitachi manufactured or supplied equipment or software by Customer or a third-party without authorization from HTA. Any such Parts shall not be covered by this guaranty.

2.1.2 HTA assumes no liability and has no responsibility for the replacement or repair of Parts necessitated by abuse, misuse, or any external cause including, but not limited to, fire, water or water failure, electrical power interruption, inadequate air conditioning, heating, or humidity control, inadequate operating environment, explosion, building collapse, acts of God, civil disorders, or any other causes beyond HTA’s control.

2.1.3 Consumable Parts, including, but not limited to, emission sources (tips), aperture strips, specimen stubs, and dry pump heads, are not covered by this guaranty.

2.1.4 Non-Hitachi accessories, including, but not limited to, energy dispersive x-ray microanalysis (EDX) systems, wavelength dispersive x-ray (WDX) systems, image intensifier systems, water chillers and anti-vibration tables, are not covered by this guaranty, unless specifically included.

3.0 Customer Responsibilities. The Customer shall have the following obligations under this Guaranty:

3.1 The Customer shall be responsible for routine operation and the Preventive Maintenance described in the maintenance section of the Equipment’s instruction manual(s).
3.2 The Customer shall promptly advise the HTA Service Engineer of any unsafe or hazardous condition near the Equipment or under which the Equipment has been operated.

4.0 Disclaimer of Warranties and Limitation of Remedies.

THE FOREGOING EXPRESS GUARANTY BY HTA IS IN LIEU OF ALL OTHER GUARANTEES AND WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS, AND ALSO IS IN LIEU OF ANY AND ALL OBLIGATIONS OR LIABILITY OF HTA FOR ANY DAMAGES WHATSOEVER, INCLUDING, BUT NOT LIMITED TO, SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, FOR ANY CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHERWISE, ARISING OUT OF OR IN CONNECTION WITH THIS GUARANTY OR THE USE OR PERFORMANCE OF THE EQUIPMENT, OR RESULTING FROM LOSS OF USE, DATA, PROFITS, OR BUSINESS OPPORTUNITIES, EVEN IF HTA WAS OR SHOULD HAVE BEEN AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

HTA’S MAXIMUM TOTAL LIABILITY AND CUSTOMER’S EXCLUSIVE REMEDY FOR A BREACH OF THIS GUARANTY SHALL BE LIMITED TO THE REPAIR OR REPLACEMENT OF ANY DEFECTIVE PART(S) PROVIDED HEREUNDER.

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