



Hamilton Company | hamiltoncompany.com  
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December 5, 2019

University of Northern Texas



3500 Camp Bowie Blvd.  
Fort Worth, TX 76107

Re: Service Contract Agreement

Dear [Redacted]

Please find our new service contract details below which can be implemented after your current contract expires.

**PREMIUM PLUS - Contract Includes:**

- Priority dispatch for contract customers
- A target response time of 24 hours for a down instrument
- A guaranteed response time of 48 hours for a down instrument
- A guaranteed call back time of 4 hours
- Parts, travel, and labor costs
- Tax not included

**2 PM Contract Option**

2 Preventive Maintenance service calls per year

<i>Total for 2 units</i>	\$37,545.00
Proximity Discount	<b>\$1,500.00</b>
<b>Service Contract Total</b>	<b>\$34,545.00</b>
<i>Optional Verification Services</i>	\$7,000.00
<b>Total with Verification Services</b>	<b>\$41,545.00</b>

Hamilton instrument validation and verification was executed with genuine Hamilton service parts, consumables and Hamilton tips. Hamilton is unable to verify performance or provide service support for instruments utilizing disposable tips provided by alternate vendor.

**\*\*\*\*\* Excludes 3rd party devices \*\*\*\*\***

Service resulting from the use of third party consumables (i.e. third party tips), is explicitly excluded from this agreement.

I am enclosing a contract for your signature. Please verify that the address and email are correct. Please return a signed copy with your purchase order. We will return your copy after processing.

Thank you,



# Hamilton Service Agreement

*For Service Contract Quote MLSTARINTX2C*

**Contact:** [REDACTED]

**Email:** [REDACTED]

**Company:** University of Northern Texas

**Address:** 3500 Camp Bowie Blvd.  
Fort Worth, TX 76107

Serial #	Configuration	Dates of Coverage	Applied Discount(s)	PREMIUM PLUS - 2 PM Service
B970	(1) easyBlood STAR 49000-14 (1) Barcode Reader	1/10/2020 to 1/9/2021	Proximity Discount of \$1,500	\$20,985.00 <sup>1</sup> with FVKII: <sup>3</sup> \$24,485.00
106A	(1) STARplus (8) 1mL Channels (2) 5mL Channels (1) CO-RE Grippers (1) Barcode Reader (1) INHECO CPAC	1/10/2020 to 1/9/2021	Proximity Discount of \$1,500	\$13,560.00 <sup>1</sup> with FVKII: <sup>3</sup> \$17,060.00

**Total Proximity Discount Applied: \$3000**

<sup>1</sup> Independent Channel Volume Verification included with each PM.

<sup>3</sup> Field Verification II (with each PM) generally required for GLP/GMP regulated labs. Includes:

- Independent Channel Volume Verification for 1mL and 5mL channels
- Volume Verification for 96 & 384 Multi-Probe Heads
- Heater/Shaker Verification (includes Amplitude, Frequency, and Temperature)
- Barcode Read Verification
- X,Y,Z Position Verification (Channels and 96 & 384 Multi-Probe Heads )
- Door Lock Verification

SEE ATTACHED UNT HEALTH SCIENCE CENTER  
ADDENDUM FOR ADDITIONAL TERMS AND CONDITIONS

If you wish to purchase this Service Contract as detailed above please insert your purchase order number, sign below and return this to Samantha Slavik at the address below by post, fax or e-mail. If you have any queries or wish to make any amendments to the quotation please contact us immediately.

Purchase Order Number: 155354

Payment terms: 30 days  
Quotation Validity: 60 days

Customer DocuSigned by:

DocuSigned by:



Date: 2/1/2020

Date: 2/28/2020

Title: Director of Contract Administration

Title: \_\_\_\_\_

**Hamilton Company**

4970 Energy Way

Reno, Nevada 89502

Tel: 800-648-5950 x492

Fax: 775-858-3024

*This quotation is subject to Hamilton Company Terms & Conditions.*



## **1 APPLICABILITY**

All purchase orders for services and extended warranty coverage ("Service Agreement") are accepted and executed on the understanding that the Customer is bound by the following Standard Conditions of Sale for Service ("Terms"). Where there is inconsistency between these Terms and any conditions which the Customer seeks to impose, these Terms shall prevail. Any deviations to these Terms shall only be binding upon Hamilton if approved in writing.

## **2 SERVICES**

Hamilton shall provide the services to Customer in North America as described in the Service Agreement ("Services") in accordance with these Terms. The Services provided shall be limited to the following:

(a) Maintenance Service: Hamilton agrees to provide maintenance service to keep the covered instrument(s) in good working order throughout the term of a Service Agreement, as more fully set forth in Section 7 below. Maintenance service includes periodic preventive maintenance according to specific needs of the instrument as determined by Hamilton. This preventive maintenance may be performed during the course of remedial maintenance. Maintenance service also includes lubrication, adjustments and replacement service parts, all as deemed necessary by Hamilton. Replacement parts may be new or refurbished and are furnished on an exchange basis; the replaced parts become the property of Hamilton.

(b) If either Party wishes to change the scope or performance of the Services, it shall submit details of the requested change to the other party in writing. Hamilton shall, within a reasonable time after such request, provide a written estimate to Customer of: (i) the likely time required to implement the change; (ii) any necessary variations to the fees and other charges for the Services arising from the change; (iii) the likely effect of the change on the Services; and (iv) any other impact that the change might have on performance of a Service Agreement. Promptly after receipt of the written estimate, the parties shall negotiate and agree in writing on the terms of such change ("Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

(c) Hamilton may, from time to time change the Services without the consent of Customer provided that such changes do not materially affect the nature or scope of the Services, or the fees or any performance dates set forth in a Service Agreement.

## **3 RIGHT TO INSPECTION**

Hamilton reserves the right to inspect any instrument prior to inclusion under a Service Agreement and may require that the instrument(s) be returned to the proper operating specifications at the Customer's expense prior to inclusion.

## **4 PERFORMANCE DATES**

Hamilton shall use reasonable efforts to meet any performance dates requested in a purchase order or specified in a Service Agreement, and any such dates shall be estimates only.

**5 PAYMENT TERMS** 5.1 Customer shall pay all invoiced amounts due to Hamilton in US dollars, NET 30 days from the date after receipt of Hamilton's invoice. Customer shall not withhold payment of any amounts due and payable by reason of any set-off of any claim or dispute with Hamilton, whether relating to Hamilton's breach, bankruptcy, or otherwise.

5.2 Should an invoiced amount be disputed by the Customer, Customer shall have the opportunity to pay the dispute in full under protest in order to avoid the application of penalties and interest. Should the dispute be determined and resolved in favor of the Customer, Customer shall be entitled to reimbursement of the disputed amount.

## **6 TAXES AND FEES**

Customer will pay, when due, all taxes, including sales, use, privilege, excise, personal property, value added, and other taxes, but not federal or state income or franchise taxes imposed on Hamilton, and all other governmental charges, assessments, fees and any related interest or penalties imposed with respect to the Products or the transactions contemplated by a Purchase Agreement.

## **7 CUSTOMER OBLIGATIONS**

Customer shall:

(a) Provide a suitable environment for the instruments as specified by Hamilton, including adequate space and electrical power, and to provide Hamilton full, free and safe access to the instruments and shall cooperate with Hamilton in all matters relating to the Services and provide such access to Customer's premises, and such office accommodation and other facilities as may reasonably be requested by Hamilton, for the purposes of performing the Services;

(b) Respond promptly to any Hamilton request to provide direction, information, approvals, authorizations or decisions that are reasonably necessary for Hamilton to perform Services in accordance with the requirements of a Service Agreement;

(c) Provide such customer materials or information as Hamilton may request to carry out the Services in a timely manner and ensure that such Customer materials or information are complete and accurate in all material respects; and

(d) Obtain and maintain all necessary licenses and consents and comply with all applicable laws in relation to the Services before the date on which the Services are to start.

## **8 CUSTOMER ACTS OR OMISSIONS**

If Hamilton's performance of its obligations under a Service Agreement is prevented or delayed by any act or omission of Customer or its agents, subcontractors, consultants or employees, Hamilton shall not be deemed in breach of its obligations under these Terms or any Service Agreement or otherwise liable for any costs, charges or losses sustained or incurred by Customer, in each case, to the extent arising directly or indirectly from such prevention or delay.

## **9 PARTS AND LABOR**

A Service Agreement shall include all required service parts, travel and labor except as otherwise stated within. Consumable parts, including syringes, tubing, and valves, are not included.



**10 SERVICE HOURS**

Service will be provided during normal working hours 8 a.m. to 5 p.m., Monday through Friday. All phone inquiries will receive a follow up call within 4 hours. If service is required, every effort will be made to be on site on the same or next regular business day. Inoperable instruments will take priority over other calls such as preventive maintenance.

**11 DEFAULT** Hamilton shall have the right to discontinue Services and also at its discretion to terminate Service Agreement if the Customer defaults in payment as stated under section 4 of this document or in respect of its other obligations to Hamilton.

**12 TERMINATION OF SERVICE**

The customer may withdraw any or all instruments from a Service Agreement by providing Hamilton with sixty (60) days written notice. Upon said termination Hamilton, at its discretion shall refund the lesser of, any prepaid amounts or the Service Agreement value, less the time and material cost of Services rendered by Hamilton based on the rates in effect at the time of Service. Either party may withdraw any or all of the instruments from this Agreement at any time for failure of the other to comply with any of these Terms.

**13 LIMITED WARRANTY** 13.1 The repair of damage, replacement of parts, or any increase in Service time caused by accident, disaster, neglect, abuse, misuse, transportation, modifications, accessories, use of third party consumables (i.e. third party tips), unauthorized software, or non-Hamilton repairs are not covered by this Agreement. A Service Agreement does not cover computer equipment sold with Hamilton instruments, such warranty is transferred to the computer manufacturer immediately after the sale. Service Agreement support for third party integrated instruments must be explicitly identified in the Service Agreement for coverage.

13.2 The warranty expressly does not cover damage caused by normal wear, faulty maintenance performed by a third party, failure to observe the operating instructions, and installation not carried out by Hamilton as well as due to other reasons for which Hamilton is not responsible. HAMILTON MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE PRODUCTS, INCLUDING BUT NOT LIMITED TO ANY (a) WARRANTY OF MERCHANTABILITY; (b) WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE; OR (c) WARRANTY OF TITLE WHETHER EXPRESS OR IMPLIED BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE.

**14 LIMITATION OF LIABILITY** 14.1 IN NO EVENT SHALL HAMILTON BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, LOST PROFITS OR REVENUES OR DIMINUTION IN VALUE, ARISING OUT OF OR RELATING TO ANY BREACH OF THESE TERMS, WHETHER OR NOT THE POSSIBILITY OF SUCH DAMAGES HAS BEEN DISCLOSED IN ADVANCE BY CUSTOMER OR COULD HAVE BEEN REASONABLY FORESEEN BY CUSTOMER, REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL HAMILTON'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO A PURCHASE AGREEMENT,

WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL OF THE AMOUNTS PAID TO HAMILTON FOR THE PRODUCTS SOLD IN THE PURCHASE AGREEMENT.

14.2 The limitation of liability set forth in Section 14.1 above shall not apply to (i) liability resulting from Hamilton's gross negligence or willful misconduct and (ii) death or bodily injury resulting from Hamilton's gross negligent or willful acts or omissions.

**15 NO GUARANTEE**

Services provided do not assure uninterrupted operation of instruments and Hamilton is not responsible for failure to render Services due to causes beyond its control including Force Majeure.

**16 FORCE MAJEURE**

Hamilton shall not be liable or responsible to Customer, nor be deemed to have defaulted or breached a Service Agreement or these Terms, for any failure or delay in fulfilling or performing any obligations stated when and to the extent such failure or delay is caused by or results from acts or circumstances beyond the reasonable control of Hamilton including, without limitation, acts of God, flood, fire, earthquake, explosion, governmental actions, war, invasion or hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil unrest, national emergency, revolution, insurrection, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials, materials or telecommunication breakdown or power outage.

**17 WAIVER**

No waiver by Hamilton of any of the provisions of these Terms is effective unless explicitly set forth in writing and signed by Hamilton. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from these Terms operates, or may be construed, as a waiver thereof. No single or partial exercise of any right, remedy, power or privilege hereunder precludes any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

**18 ATTORNEY FEES**

Should either party hereto, or any heir, personal representative, successor or assign of either party hereto, resort to litigation to enforce a Purchase Agreement the parties shall be responsible for their own attorney's and accountant's fees associated with the costs of litigation, and in no event shall the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its or their reasonable attorneys' fees and costs in such litigation from the party against whom enforcement was sought.

**19 CONFIDENTIAL INFORMATION**

All non-public, confidential or proprietary information of Hamilton, including but not limited to specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by Hamilton to Customer, whether disclosed orally or disclosed



or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential” in connection with a Purchase Agreement is confidential, solely for the use of performing the Purchase Agreement and may not be disclosed or copied unless authorized in advance by Hamilton in writing. Upon Hamilton’s request, Customer shall promptly return all documents and other materials received from Hamilton. Hamilton shall be entitled to injunctive relief for any violation of this Section. This Section does not apply to information that is: (a) in the public domain; (b) known to Customer at the time of disclosure; or (c) rightfully obtained by Customer on a non- confidential basis from a third party.

**20 ASSIGNMENT**

Customer shall not assign any of its rights or delegate any of its obligations under a purchase order without the prior written consent of Hamilton. Any purported assignment or delegation in violation of this Section is null and void. No assignment or delegation relieves Customer of any of its obligations under a purchase order.

**21 NO THIRD-PARTY BENEFICIARIES**

A purchase order is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of these Terms.

**22 LEGAL CONSTRUCTION**

These Terms and all Service Agreements to which the same apply shall be construed in accordance with the laws of the State of Nevada, U.S.A. Any disputes arising in connection with these Terms and all sale contracts to which the same apply shall be finally settled by arbitration in accordance with the laws and rules of the State of Nevada and such proceedings held and located in Reno, Nevada, U.S.A.

**23 SEVERABILITY**

If any term or provision of a Service Agreement or these Terms are invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of a Purchase Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction.

## STANDARD ADDENDUM TO AGREEMENT

Contracts with the **University of North Texas Health Science Center at Fort Worth** (“University”) are subject to the following terms and conditions, which are incorporated for all purposes into the Agreement to which they are attached. In the event of a conflict between the Agreement and this Addendum to Agreement, this Addendum shall govern. Any term or condition of the Agreement that is not superseded by a term or condition of this Addendum shall remain in full force and effect.

**Payment.** Payment will be made in accordance with the terms of University’s purchase order. Vendor must be in good standing, not indebted to the State of Texas, and current on all taxes owed to the State of Texas for payment to occur.

**Eligibility to Receive Payment.** By entering into and performing under this Agreement, Vendor certifies that under Section 231.006 of the Texas Family Code and under Section 2155.004 of the Texas Government Code, it is not ineligible to receive the specified payment and acknowledges that this Agreement may be terminated and payment may be withheld if this certification is inaccurate.

**Tax Exempt.** University is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims against University.** Chapter 2260 of the Texas Government Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Government Code, is applicable to this Agreement and is not preempted by other applicable law, the dispute resolution process provided for in Chapter 2260 and the related rules adopted by the Texas Attorney General pursuant to Chapter 2260, shall be used by Vendor to attempt to resolve any claim for breach of contract against University that cannot be resolved in the ordinary course of business.

**Governing Law and Venue.** This Agreement shall be construed and enforced under and in accordance with the laws of the State of Texas. The Agreement is made and entered into, and is performable in whole or in part, in the State of Texas, and venue for any suit filed against University shall be subject to the mandatory venue statute set forth in § 105.151 of the Texas Education Code.

**No Excess Obligations.** In the event this Agreement spans multiple fiscal years, University’s continuing performance under this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the contract by the Texas State Legislature. If the Legislature fails to appropriate or allot the necessary funds, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act, University shall issue written

notice to Vendor that University may terminate the Agreement without further duty or obligation.

**Travel Expenses.** In the event the Agreement required University to reimburse Vendor for travel expenses, then reasonable travel, meals, and lodging expenses shall be charged in accordance with and shall not exceed State of Texas travel, meal, and lodging reimbursement guidelines applicable to employees of the State of Texas.

**Delivery.** Delivery shall be FOB Destination.

**Public Information.** University shall release information to the extent required by the Texas Public Information Act and other applicable law. If requested, Vendor shall make public information available to University in an electronic format.

**Required Posting of Contracts on Website.** Vendor acknowledges and agrees that University is required by Section 2261.253 of the Texas Government Code to post each contract it enters into for the purchase of goods or services from a private vendor on its Internet website, including any terms and conditions otherwise marked confidential and/or proprietary.

**Insurance.** University, as an agency of the State of Texas, is insured for general liability insurance under a self-insurance program covering its limits of liability. The parties agree that such self-insurance by University shall, without further requirement, satisfy all general liability insurance obligations of University under the Agreement.

**HIPAA.** The parties understand and agree that this Agreement may be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the administrative regulations and/or guidance which have issued or may in the future be issued pursuant to HIPAA, including, but not limited to, the Department of Health and Human Services regulations on privacy and security, and Texas state laws pertaining to medical privacy (collectively, "Privacy Laws"). Vendor agrees to comply with all Privacy Laws that are applicable to this Agreement and to negotiate in good faith to execute any amendment to this Agreement that is required for the terms of this Agreement to comply with applicable Privacy Laws. In the event the parties are unable to agree on the terms of an amendment pursuant to this paragraph

within thirty (30) days of the date the amendment request is delivered by a party to the other, this Agreement may be terminated by either party upon written notice to the other party.

Debarment. Vendor certifies that neither it nor any of its Principals (officers, directors, owners, partners, key employees, principal investigators, researchers or management or supervisory personnel) is presently debarred, suspended, proposed for debarment, declared ineligible or excluded from participation in this transaction or in any federal grant, benefit, contract or program (including but not limited to Medicare and Medicaid and Federal Health Care Programs) by any Federal department or agency. (See Executive Orders 12549 and 12689, 45 CFR part 76, 48 CFR part 9; 42 USC sect. 1320a-7). Vendor shall notify University within three (3) days of its receipt of an initial sanction notice, notice of proposed sanction or of the commencement of a formal investigation, or the filing of any charges by any governmental regulatory or law enforcement agency that effects this certification.

Israel Non-Boycott Verification. If the Agreement is subject to Texas Gov't Code Section 2270.002, Vendor hereby represents, verifies, and warrants that it does not boycott Israel and will not boycott Israel during the term of the Agreement.

Limitations. University is subject to constitutional and statutory limitations on its ability to enter into certain terms and conditions of the Agreement, which may include those terms and conditions relating to: liens on University property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers, and limitations on legal rights, remedies, requirements, and processes; limitations of time in which to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorney's fees; dispute resolution; and indemnities. Terms and conditions relating to these limitations will only be binding on University to the extent permitted by the Constitution and the laws of the State of Texas.

**VENDOR**

**UNIVERSITY OF NORTH TEXAS  
HEALTH SCIENCE CENTER AT FORT WORTH**



Date: 2/28/2020

Date: 2/1/2020

HSC Contract # 2020-0403



## **Declaration of Procurement Method**

The attached contract document has been issued as a result of either a sole source or proprietary justification approved by the University of North Texas System Procurement Department.

The approved justification form is on file with the UNT System Procurement Department records.