

**TCM Contract # 2021-531****Addendum attached hereto and  
incorporated herein for all purposes.****Bill To** 71603  
**University of North Texas**  
invoices@untsystem.edu  
1112 Dallas Drive, Suite 4000  
Denton, TX 76205  
UNITED STATES**Enduser** F7160305  
**University of North Texas**  
Dept. of Engineering  
3900 North Elm  
Denton, TX 76207  
UNITED STATES

<b>Terms of Payment</b> Net 30 days <b>Billing Cycle</b> Annual	<b>Quote Number</b> 116289 / PREF <b>Quote Date</b> 08/23/21 <b>Start Date</b> 09/01/21 <b>End Date</b> 08/31/22
<b>Your Thermo Fisher Scientific Contact is</b> <b>Contact</b> [REDACTED] <b>Telephone</b> <b>Fax Number</b> <b>Email</b> MSDCSContracts@thermofisher.onmicrosoft.com	<b>Customer Details</b> <b>Your Reference / PO</b> <b>Contact</b> [REDACTED] <b>Telephone</b> <b>Email</b> [REDACTED]

To keep your instrument performing at its best you need a Global partner, with a history of over 60 years of service excellence, who is committed to your success. By choosing to purchase a contract you can count on Thermo Fisher Scientific Service to maintain your instrument's superior performance, protect your investment, and assure your instrument availability.

The Thermo Scientific Preferred contract provides 4-hour targeted telephone support, 48-hour targeted onsite labor response, unlimited labor hours (including travel time and expenses), all necessary spare parts (including all accessories listed on the contract), replacement FEG tip (for applicable products), one preventive maintenance visit (per year) and software updates.

For the specific details of your contract, refer to the attached Terms and conditions.

**CONFIDENTIAL**

Please reference our quotation number above on all related correspondence

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Line	Item	Description	Type	Amount
1	NovaNanoSEM230 / D9254 / F7160305 Contract Period: 09/01/21 To 08/31/22	SEM SFEG NOVANANOSEM	Pref	50,625.96
2		4% Multi-Tool Disc.		-2,025.12

PLEASE REFERENCE THE QUOTE NUMBER ON FACE OF PURCHASE ORDER  
PURCHASE ORDERS NEED TO BE MADE OUT TO FEI COMPANY

This agreement covers the above tool and any additional accessories separately listed. Chillers, transformers, compressors, UPS, 3rd party accessories and consumables are excluded from this agreement unless listed above. Please consult the T&Cs for further details and limitations.

Service availability is Monday through Friday, during Thermo Fisher Scientific's normal business hours (8:00am - 5:00pm), excluding Holidays.

Customer Service: 1-866-MYFEICO (1-866-693-3426)

This Quotation is valid for 30 days or until your current warranty or contract expires, whichever is later. Pricing is subject to change thereafter.

Acceptance of this quote, whether by signing this quote and returning it to Thermo Fisher Scientific or submitting a Purchase Order based upon this quote, shall constitute acceptance of the agreement. If customer Purchase Order (reference) is needed on the invoice, please enter on header of this quotation.

The contracting entity for these goods is FEI Company and the PO should be issued to FEI Company to the e-mail address indicated above.  
Pricing is based on the Terms and Conditions of FEI Company, part of Thermo Fisher Scientific, unless otherwise noted on your quotation. Agreements are billed in full upon receipt and acceptance of a Purchase Order on or prior

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to the start of the agreement period. For information about special billing or payment options and the associated fees please contact us.

Agreements executed 30 days or more after the start date shown on your quote may be subject to a pre-contract inspection. The pre-contract inspection, and any necessary parts, will be invoiced at Thermo Fisher Scientific's prevailing market rates.

If customer requests Thermo Fisher Scientific to use certain documents at invoicing it will be customer's responsibility to supply these documents in time. Thermo Fisher Scientific will invoice according to schedule and no credit will be issued for late delivery of customer documents.  
The Terms and Conditions governing and describing the services available to the customer set forth above under this quote are attached.

<b>Line Amount</b>	<b>50,625.96</b>	<b>Agreed Amount</b>	<b>48,600.84</b>
<b>Additional Charges</b>	<b>-2,025.12</b>	<b>Estimated Tax</b>	<b>0.00</b>
		<b>Grand Total</b>	<b>48,600.84 USD</b>

Agreed and Accepted  
Authorized Signature

Signed by

Date

**CONFIDENTIAL**

Please reference our quotation number above on all related correspondence



## SERVICE AGREEMENT

### SCHEDULE OF SPECIFIC TERMS AND CONDITIONS – PREFERRED 48 HOURS COVERAGE

These Specific Terms and Conditions are part of the Service Agreement (“Agreement”) between Customer and FEI (“Company”). All capitalized terms used herein shall have the same meaning as set forth in the Agreement.

1. **“PREFERRED 48 HOURS” SERVICE AGREEMENT:** Includes labor, travel, living expenses and parts coverage.
2. **CONSUMABLE COVERAGE AND EXCLUSION:** For FEG systems, the FEG source is covered under this Agreement and will be replaced upon failure. All other system consumables are excluded from coverage. Consumables include column sources, depositing and milling materials, GIS and other chemicals, gases and liquids, calibration and testing samples, wearable vacuum parts (Hot/Cold Cathode Gauges, pump seals), sample grids and similar carriers, disposables, apertures and small tooling, and aperture strips.
3. **SOFTWARE COVERAGE:** Software updates that solely improve the functionality of previously purchased software capabilities are included in this Agreement. Software upgrades that add new functionality are available for separate purchase. Company determines which software releases are classified as updates or upgrades. Amira, Avizo, ResolveRT, and Pergeos software products are excluded from Company’s standard software coverage and are subject to a separate maintenance agreement. Third party software updates are provided if they are no charge from the original software provider.
4. **TARGETED RESPONSE TIME:** Service availability is Monday through Friday, during Company’s normal business hours, with a targeted response time of 48 hours.
5. **SCHEDULED MAINTENANCE:** Company will provide scheduled preventive maintenance visit(s) (each a “Scheduled Visit”) during the term of this Agreement. Company will, during the course of a Scheduled Visit, undertake ordinary repairs and adjustments arising from normal usage of the Equipment. Preventative maintenance does not include repairs or adjustments of third party parts or components. Company will work with Customer to arrange a Scheduled Visit on a mutually agreeable date. Cancellation by Customer of the Scheduled Visit or denial of Company access for a Scheduled Visit will relieve Company of any further responsibility to complete the Scheduled Visit. At the discretion of Company, Scheduled Visits may be made at the same time as an unscheduled maintenance visit if such unscheduled maintenance visit occurs within one (1) month before a previously planned for Scheduled Visit.
6. **DISCOUNT ON ADDITIONAL SERVICE:** Labor and parts that are outside the scope of this Agreement can be purchased at a 15% discount from Company’s then current list price. There is no discount on consumables. Company’s service helpdesk or service managers or their designees are authorized to offer service quotes. Any exceptions or changes to quotes or other terms contained in this Agreement must be approved in advance in writing by Company.



## SERVICE AGREEMENT

### GENERAL TERMS AND CONDITIONS

*See Schedule of Specific Terms and Conditions at the beginning of this document*

The following terms and conditions ("Agreement") govern services provided by FEI Company ("Company") to Customer. The quote for the services ("Service Quote") and the specific terms and conditions referenced on the Service Quote ("Specific Terms") are hereby incorporated into the Agreement by this reference, and Customer hereby acknowledges receipt and review and accepts the application of such documents. This Agreement is effective as of the Effective Date specified on the Service Quote.

1. **EQUIPMENT COVERAGE:** This Agreement relates only to the specific base tool and Company components as well as any additional accessories and/or third party items listed in the Service Quote ("Equipment"). Third party items may come from vendors such as Edax, Gatan, Oxford, and Bruker. Third party items may also include items such as chillers, transformers, compressors, and UPS. Company shall use commercially reasonable efforts to replace or repair any computer necessary for functionality of the Equipment. Customer is responsible for backing up all data stored by Customer on the Equipment.
2. **SERVICES PROVIDED BY COMPANY:** Company will provide service as described hereunder:
  - 2.1 **REQUESTING SERVICE:** To request service on Equipment, Customer shall call the telephone number on the Service Quote. Company will make commercially reasonable efforts to respond within the time frame set out for the coverage level listed in the Service Quote. If a Company representative cannot resolve an Equipment problem in a reasonable time frame, Company will escalate the problem by providing both telephone and/or on-site support, as necessary.
  - 2.2 **TELEPHONE SUPPORT:** Company will provide telephone support for repair and maintenance of the Equipment during Company business hours set forth on the Service Quote, exclusive of Company holidays. Such support will include responses about operating practices and service issues that can be diagnosed and resolved over the telephone. For telephone support, Customer shall call the telephone number set forth on the Service Quote or such other number provided by Company.
  - 2.3 **PROVISION OF SERVICES:** Services under this Agreement will be performed by Company or its authorized representative. Company may, in its sole discretion, change the authorized representative and will provide Customer updated telephone numbers and hours of service.
  - 2.4 **REPLACEMENT PARTS AND COMPONENTS:** Subject to availability, Company will make commercially reasonable efforts to ship standard parts or components, in accordance with the shipping terms on the Service Quote, within twenty-four (24) hours after authorization for a part or component. In certain cases, Equipment or a part will need to be returned to Company for repair or replacement. Equipment may be returned to Company only after approval and assignment of a specific return materials control number by Company. Customer acknowledges and agrees that replacement parts or components may be new or reconditioned to manufacturer's specifications. Company may, at its sole discretion and to the extent permitted by law, exchange and/or repair and modify existing parts or components of the Equipment, so long as it does not diminish the functionality of the Equipment. Any repairable parts or components supplied and replaced by Company with replacement parts or components shall become the sole property of Company. Company sells repairable parts or components on net price basis. Customer is responsible to return any such parts or components within ninety (90) days after the date of delivery of the replacement parts or components to Customer. Customer will be invoiced full list price if Customer fails to return such parts or components. Any part or component package opened by Customer will be considered as sold and if such part or component is not returned within ninety (90) days after the date of delivery of the replacement part or component, the full list price will be invoiced to Customer. A restocking fee will be charged for all returned parts and components.
3. **LIMITATIONS ON SERVICES:**
  - 3.1 **EQUIPMENT MISUSE:** Company shall not be obligated to provide services for any Equipment failure or defect resulting directly or indirectly (as determined in Company's sole discretion), from:
    - (a) improper use or care of the Equipment, including operation outside Company's recommended specifications;
    - (b) malfunctions due to obvious operator misuse, including the introduction of a computer virus;
    - (c) improper use of a power supply;
    - (d) a Customer facility failure unrelated to the Equipment;
    - (e) damage due to vandalism, explosion, flood or fire, weather or environmental conditions;
    - (f) installation, repairs, modifications, updates, upgrades or maintenance by persons other than Company's representatives;
    - (g) loss of Equipment or any accessory parts or components;
    - (h) Non-Standard Materials (as defined herein) installed by persons other than Company's representative; or





(i) wrongful acts, negligence or failure to comply with this Agreement.

- 3.2 RISK OF DAMAGE FROM CONSUMABLES:** Customer shall notify Company in writing of any non-Company authorized consumables used in the Equipment. The costs of all repairs that are caused by the use of non-Company authorized consumables are excluded from Company's service obligations and will be billed separately to the Customer.
- 3.3 HOURS OF SERVICE:** Any service visit, whether involving preventive or corrective maintenance, will be made during regular Company business hours only, as set forth on the Service Quote, exclusive of Company holidays.
- 3.4 PRODUCTS OF OPERATION/CONTAMINATION:** The cost and responsibility for disposal of by-products resulting from Equipment operation remains that of Customer. Company reserves the right to reject any replaced parts or components returned to Company for a repair credit. Any such replaced parts or components, rejected by Company, will be billed to Customer at Company's then-current list price for such part or component. Notwithstanding anything in Section 2.4, in no event will Company accept delivery of any part or Equipment that has been exposed to or is contaminated with radioactive substances, biological/infectious agents, mercury, polychlorinated biphenyls (PCBs), dioxins or sodium azide, even if it is decontaminated.
- 4. OPERATING ENVIRONMENT:** The Customer is responsible for maintenance of an operating environment that complies with Company specifications. System performance issues caused by a non-compliant environment are not covered under this Agreement and will be billed separately to the Customer.
- 5. END OF COMPLETE SUPPORT:** Notwithstanding anything in this Agreement, Customer acknowledges that Company may designate certain Equipment to be in the "End of Complete Support" phase of its life cycle prior to the commencement of this Agreement. Company will notify Customer of any Equipment which is designated to be in such phase. Company makes no assurances or guarantees of replacement parts or components or expertise availability for such Equipment and disclaims any responsibility for non-performance of the Equipment due to unavailability (for any reason). Company makes no assurances or guarantees of replacement parts, components or expertise for third party items deemed "End of Support" by the third party supplier and disclaims any responsibility for non-performance of the Equipment due to unavailability (for any reason) of third party expertise or parts.

If Company does not currently stock a replacement part or component, Company will make commercially reasonable efforts to obtain such part or component from a third party at no charge to Customer. If Company is unable to obtain such part or component from a third party or a third party supplier is unable to supply replacement parts or components, Customer has the right to terminate this Agreement as of the date such replacement part or component request was requested by Customer (the "Request"). If Customer notifies Company of the termination within fifteen (15) days of the Request, all amounts due under this Agreement will terminate as of the date of the Request, and any prepaid amounts under this Agreement due after that date will be refunded to Customer.

For Equipment in End of Complete Support, Company will no longer provide new software updates or upgrades for the Equipment. The most recent software update, if not previously installed, will be available at no charge.

- 6. CUSTOMER FACILITIES AND EQUIPMENT ACCESS:** Customer shall allow Company's representative immediate and full access to the Equipment during each service visit. Customer shall also make available to Company a qualified employee who is familiar with the Equipment and, if the visit is for corrective maintenance, the identified problem. The person must be present during the visit to assist in initial diagnosis to support resolution of the problem. Customer shall provide Company's representative during the visit with a satisfactory and safe work area, and adequate cleaning supplies, electrical power, storage facilities, and telephone access. Upon notice by Company, Customer shall provide the services of electricians, plumbers, masons, carpenters or other tradesmen, as necessary, to modify or correct Customer's facilities to accommodate proper functioning and service of the Equipment. Upon request, any and all services required must be provided within a reasonable time frame and at no charge to Company.
- 7. COMPLIANCE WITH RULES:** While on Customer's premises, Company's representative shall abide by all reasonable Customer's rules and regulations applicable to the use of such premises, provided Company has received a written copy of such rules and regulations reasonably in advance of Company's visit.
- 8. SERVICES OUTSIDE THE SCOPE OF THE AGREEMENT:** Customer may request service, including Equipment shut-downs for facility closings, labor and parts for general Equipment overhauls, reconditioning or relocations, and parts or components beyond what is provided in this Agreement. Before providing such service, parts or components, Company will provide a quote listing an estimate of labor and materials that will be required for such work. All work must be approved in writing by Customer prior to Company undertaking the work by way of an additional confirmed PO and shall be subject to the terms set forth on such quote.



- 9. INVOICING AND PAYMENT TERMS:** Upon acceptance of Customer's purchase order (PO), Company will invoice the full Agreement price on or prior to the start of the Agreement period or if required by applicable law, a monthly portion of the full Agreement price at the end of each monthly period. Unless otherwise specifically agreed to by the parties in writing, payment terms are net thirty (30) days from the date of the invoice. Customer is responsible for providing all documents required for Company to invoice Customer within ten (10) business days of the acceptance of a Customer's PO. Payments not received within thirty (30) days of Company's invoice date or if the required document necessary for invoicing are not received within ten (10) business days of the acceptance of Customer's PO, Customer will be subject to a late payment charge equal to the lower of (a) twelve percent (12%) per annum or (b) the maximum interest rate permitted under applicable law. For US Government contracts, standard US Government payment terms for the period of the Agreement will apply.
- 10. TAXES:** Customer is responsible for all applicable taxes due under the Agreement except for taxes based on Company's income and agrees to indemnify and hold Company harmless for any claims relating thereto. Customers claiming tax-exempt status shall provide Company with satisfactory evidence of such status.
- 11. FORCE MAJEURE:** Neither party shall be in breach of this Agreement if it fails to perform due to causes beyond its control, including but not limited to, acts of God, power outage, power surge, fire, theft, war, riot, civil unrest, embargoes, strikes, labor disputes, communications failures, terrorism or acts of civil or military authorities.
- 12. WARRANTY AND DISCLAIMER:** All services provided hereunder will be performed in a workmanlike manner. Subject to the terms of this Agreement, all labor, replacement parts or components (excluding consumables) provided by Company are guaranteed for a period of ninety (90) days from the visit completion date. Company's sole and exclusive obligation for breach of warranty shall be, at Company's option, to (a) use commercially reasonable efforts to perform the services in a manner that conforms with the warranty, or replace the replacement parts or components as the case may be, (b) refund to Customer the pro-rata portion of the fees paid to Company allocated to the nonconforming services or replacement parts or components. The remedies set forth in this section are Customer's exclusive remedies for any breach of warranty. **EXCEPT AS SET FORTH IN THIS SECTION, COMPANY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, RESPECTING ITS OBLIGATIONS HEREUNDER.** The aforementioned shall, however, not limit or exclude any statutory rights of Customer due to the provision of nonconforming services or delivery of defective replacement parts or components.
- 13. TERM AND TERMINATION:**
- 13.1 TERM:** Unless agreed to in writing, the term of this Agreement shall be one (1) year from the Effective Date.
- 13.2 TERMINATION FOR CONVENIENCE:** Either party may terminate this Agreement at any time with ninety (90) days' prior written notice. If this Agreement is terminated by Customer for convenience, any remaining Agreement balance which may be due to Customer is non-refundable.
- 13.3 SUSPENSION OR TERMINATION FOR BREACH:** If either party fails to perform its obligations under this Agreement and such failure continues for a period of thirty (30) days (ten (10) days in the event of non-payment by Customer) after written notice of such failure, the non-breaching party shall have the right to suspend or terminate this Agreement and have no further obligation to other party hereunder, and such suspension or termination shall be in addition to and not exclusive, of other rights and remedies available to non-breaching party. Any suspension of this Agreement by Company for non-payment by Customer shall not constitute a waiver of the Customer's obligation to pay all amounts due under this Agreement. To the extent permitted by law, Company shall have the right to suspend or terminate this Agreement in the case of breach or default by Customer under any other Agreement with Company.
- 14. INDEPENDENT CONTRACTOR:** Under the terms of this Agreement, Company is an independent contractor and neither party to this Agreement shall be deemed an agent, joint-venturer or partner of the other.
- 15. CONFIDENTIAL INFORMATION:** Customer understands that in the course of Company performing its obligations hereunder, Company may disclose confidential information ("Confidential Information"), to Customer. Customer may use Confidential Information only to assist Company in performing its obligations hereunder. Customer agrees not to disclose Confidential Information, directly or indirectly, to any third party. Customer may, however, disclose Confidential Information to its employees who have a need to know and are bound by confidentiality obligations no less restrictive than those set forth herein. Customer will protect the Confidential Information using the same degree of care it uses to protect its own confidential information, but no less than a reasonable degree of care. Customer's obligations of confidentiality hereunder shall not apply to information which: (a) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (b) is independently known by Customer at the time of receiving such information; (c) is hereafter furnished to Customer by a third party without a breach of any obligation to Company; (d) is independently developed by Customer without using Company's Confidential Information or breaching this Agreement; or (e) is required by law to be disclosed in response to a valid order by a court or other governmental body, provided Customer gives Company prompt written notice of such

requirement prior to disclosure so that Company may attempt to obtain an order protecting such information from public disclosure. Customer's obligation under this Section shall survive the termination or expiration of this Agreement. Customer is prohibited from taking photos or video of Company representatives performing service without Company's prior written consent. If Customer begins to take photos or video of a Company representative during the course of a service visit, such representative shall have the right to discontinue service.

## 16. LIMITATION ON LIABILITY:

**16.1 WITH THE EXCEPTION OF CUSTOMER'S LIABILITY ARISING FROM A BREACH OF SECTION 15 ("CONFIDENTIAL INFORMATION"), NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR (I) ANY INDIRECT, SPECIAL, EXEMPLARY, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; OR (II) LOSS OF REVENUE; (III) LOSS OF ACTUAL OR ANTICIPATED PROFITS; (IV) LOSS OF ANTICIPATED SAVINGS; (V) LOSS OF BUSINESS; (VI) LOSS OF OPPORTUNITY; (VII) LOSS OF GOODWILL; (VIII) LOSS OF REPUTATION; OR (XI) LOSS OR CORRUPTION OF DATA, EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.**

**16.2 EACH PARTY'S LIABILITY HEREUNDER WILL BE LIMITED TO ACTUAL DIRECT DAMAGES, AND FOR COMPANY SUCH LIABILITY SHALL NOT TO EXCEED THE AMOUNT RECEIVED BY COMPANY HEREUNDER. THESE LIMITATIONS WILL APPLY FOR ALL CLAIMS, INCLUDING WITHOUT LIMITATION, CONTRACT WARRANTY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. NOTHING HEREIN SHALL EXCLUDE OR LIMIT A PARTY'S LIABILITY FOR (I) FRAUD; (II) DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE; OR (III) ANY OTHER LIABILITY WHICH CANNOT BE EXCLUDED BY LAW.**

**17. RENEWAL PRICES:** Contract prices for renewal of this Agreement are subject to change without notice. Company will provide Customer with a Service Quote which contains the then current pricing prior to the expiration of the current agreement date.

**18. NOTIFICATION OF NON-STANDARD CHEMICAL USAGE AND OTHER MATERIALS:** Customer agrees to inform Company in writing of any use of non-standard chemicals or gases, bio-hazard substances or radiation (collectively "Non-Standard Materials") on or with the Equipment prior to making a request for Company to service the Equipment. Such notification shall include the name of the Non-Standard Materials, the quantities used, applicable Material Safety Data Sheets (MSDS or SDS) and any other supporting information. Customer shall perform all actions required for system decontamination prior to service by Company, certify such system decontamination if required by Company, and be responsible for the costs of decontamination. Customer shall put in place and maintain any infrastructure, tools or equipment necessary for Company to service the Equipment on which the Customer has used Non-Standard Materials. Company reserves the right to refuse to provide service on Equipment that has a history of usage of Non-Standard Materials and shall have no obligations under this Agreement to provide such service.

**19. EXPORT CONTROLS:** Customer will not export or re-export, either directly or indirectly, any Equipment, part or component or system incorporating such Equipment, part or component without first obtaining any required license or other approval from the appropriate host government, other applicable authorities, including but not limited to the U.S. Department of Commerce (or any other agency or department of the U.S. Government with appropriate authority), the Dutch Ministry of Foreign Affairs (Ministerie van Buitenlandse Zaken) and Czech Ministry of Industry and Trade (MPO); and/or from Company when applicable. If the delivery of products, services and/or documentation becomes (1) subject to export license, or (2) restricted or prohibited due to (changed) regulations, Company may suspend its obligations and/or terminate the relevant order in all cases without incurring any liability towards the Customer.

**20. ASSIGNMENT:** Customer may not assign or transfer this Agreement, in whole or in part, by operation of law or otherwise, without the prior written consent of Company.

**21. NOTICES:** Any notice required hereunder shall be in writing and shall be deemed given on receipt by such party at the address set forth herein or such other address indicated by either party in writing.

**22. AMENDMENTS:** This Agreement may only be amended if agreed by both parties in writing.

## 23. ENTIRE AGREEMENT:

**23.1** This Agreement **and attached Standard Addendum to agreement** sets forth the entire understanding of the parties with respect to the subject matter of this Agreement and supersedes any and all prior understandings and agreements, whether written or oral, between the parties with respect to such subject matter.





- 23.2** This Agreement cannot be modified or amended by any other or subsequent document or agreement (including any purchase order, even if such purchase order has a statement to the contrary) and the terms of this Agreement shall govern any service arrangement with Customer, unless modified or changed by a subsequent agreement referencing this Agreement which has been approved in writing by Company. If the terms of this Agreement and the attachments hereto conflict, the terms on the attachments shall govern.
- 24. SEVERABILITY:** If any provision of this Agreement is, for any reason, held to be invalid, illegal or unenforceable in any respect, the invalidity, illegality or unenforceability of such provision shall not affect any other provision of this Agreement. This Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.
- 25. WAIVER:** The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.
- 26. HIRING COMPANY PERSONNEL:** For so long as Customer has a service arrangement with Company (under this Agreement or otherwise), and for one (1) year following the termination of such arrangement, Customer will not directly, indirectly or through a third-party, solicit for hire, hire or otherwise engage, any Company representative, as an employee, independent contractor, representative or agent, or engage any entity where that person is a principal, shareholder, partner or sole proprietor to provide Equipment service, without the prior written consent of Company.
- 27. GOVERNING LAWS:** This Agreement shall be governed by the laws of the State of Oregon, exclusive of choice of law rules.

## STANDARD ADDENDUM TO AGREEMENT

Contracts with the University of North Texas System and the University of North Texas (collectively, "UNT") 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.** In accordance with Chapter 2251 of the Texas Gov't Code: (a) payment shall be made no later than thirty days following the later of (i) delivery of the goods or completion of the services and (ii) delivery of an invoice to UNT; and (b) interest, if any, on past due payments shall accrue and be paid at the maximum rate allowed by law. 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. Invoices and any required supporting documents must be presented to: University of North Texas – Business Service Center, 1112 Dallas Dr. Ste. 4000, Denton, TX 76205.

**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 Gov't 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.** UNT is exempt from the payment of taxes and will provide necessary documentation confirming its tax exempt status.

**Breach of Contract Claims Against UNT.** Chapter 2260 of the Texas Gov't Code establishes a dispute resolution process for contracts involving goods, services, and certain types of projects. To the extent that Chapter 2260, Texas Gov't 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 the parties to attempt to resolve any claim for breach of contract against UNT 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 Denton County, Texas, and venue for any suit filed against UNT 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, UNT'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, UNT shall issue written notice to Vendor that UNT may terminate the Agreement without further duty or obligation.

**Travel Expenses.** 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.

**Insurance.** UNT, 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 UNT shall without further requirement, satisfy all insurance obligations of UNT under the Agreement.

**Public Information.** UNT 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 UNT in an electronic format. The requirements of Subject J, Chapter 552, Texas Government Code, may apply to this contract and Vendor agrees that the contract can be terminated if Vendor knowingly or intentionally fails to comply with a requirement of that subchapter. Further, Vendor agrees (1) to preserve contracting information for the duration of the contract and according to UNT records retention requirements; (2) to promptly provide contracting information to UNT when requested; and (3) upon completion of the contract to provide, at no cost, all contracting information to UNT or to preserve all contracting information according to UNT's records retention requirements.

Required Posting of Contracts on Website. Vendor acknowledges and agrees that UNT is required by Section 2261.253 of the Texas Gov't 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.

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.** UNT 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 UNT 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 not be binding on UNT, except to the extent not prohibited by the Constitution and the laws of the State of Texas.

VENDOR: FEI Company  
By: [REDACTED]  
Name: [REDACTED]  
Title: [REDACTED]  
Date: August 27, 2021

UNIVERSITY OF NORTH TEXAS

By: [REDACTED]  
Date: 9/1/2021

## **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.