

ORIGINAL

**AGREEMENT**

**BETWEEN THE**

**CITY OF SAN DIEGO**



**AND**

**LIFE TECHNOLOGIES**

**TO PROVIDE MATERIALS AND SERVICES FOR  
FORENSIC DNA TESTING**

DOCUMENT NO. 00-21568

FILED NOV 15 2022

OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

## AGREEMENT

This Agreement (Agreement) is entered into by and between the City of San Diego, a municipal corporation (City), and Life Technologies Corporation, a corporation (Contractor).

### RECITALS

- A. City wishes to retain Contractor for the materials and post-warranty instrument maintenance services to perform forensic human DNA testing as further described in the Scope of Work, attached hereto as Exhibit A.
- B. Contractor has the expertise, experience, and personnel necessary to provide the Services.
- C. City and Contractor (collectively, the "Parties") wish to enter into an agreement whereby City will retain Contractor to provide the Goods and Services.
- D. This Agreement is exempt from competitive bidding requirements pursuant to San Diego Municipal Code (SDMC) section 22.3208(d) because the Purchasing Agent has certified that the award of a sole source contract is necessary under SDMC section 22.3016(a).

NOW, THEREFORE, for good and valuable consideration, the sufficiency of which is acknowledged, City and Contractor agree as follows:

### ARTICLE 1 CONTRACTOR SERVICES

**1.1 Scope of Services.** Contractor shall provide the Goods and Services to the City as described in Exhibit A, Scope of Work, which is incorporated herein by reference.

**1.2 Contract Administrator.** The San Diego Police Department (Department) is the Contract Administrator for this Agreement. Contractor shall provide the Services under the direction of a designated representative of the Department as follows:

Brent Williams, Police Captain  
1401 Broadway, San Diego, CA 92101  
619-531-2526  
[blwilliams@pd.sandiego.gov](mailto:blwilliams@pd.sandiego.gov)

**1.2.1 Notices.** Unless otherwise specified, in all cases where written notice is required under this Contract, service shall be deemed sufficient if the notice is personally

delivered or deposited in the United States mail, with first class postage paid, attention to the above designated Contract Administrator. Proper notice is effective on the date of personal delivery or five (5) days after deposit in a United States postal mailbox unless provided otherwise in the Contract. Any party entitled or required to receive notice under this Contract may, by like notice, designate a different address to which notices shall be sent.

**1.3 Submittals Required with the Agreement.** Contractor is required to submit all forms and information before the Agreement is executed: 1) Contractor Standard Pledge of Compliance Form; and 2) EOC documents.

## **ARTICLE 2 DURATION OF AGREEMENT**

**2.1 Term.** This Agreement shall be for an initial term of five years beginning on the Effective Date. The term of this Agreement shall not exceed five years unless approved by the City Council by ordinance.

**2.2 Effective Date.** This Agreement shall be effective on the date it is executed by the last Party to sign the Agreement, and approved by the City Attorney in accordance with San Diego Charter Section 40 (Effective Date).

## **ARTICLE 3 COMPENSATION**

**3.1 Amount of Compensation.** City shall pay Contractor for reagents, kits, consumables, services, or instrumentation rendered in accordance with this Agreement in an amount not to exceed \$2,795,000.

**3.2 Invoices.** Contractor's invoice must be on Contractor's stationary with Contractor's name, address, and remittance address if different. Contractor's invoice must have a date, an invoice number, a purchase order number, a description of the goods or services provided, and an amount due. Contractor shall submit invoices to the following address:

San Diego Police Department  
Fiscal Operations/Accounts Payable  
Mail Station 715  
1401 Broadway  
San Diego, CA 92101

**3.3 Annual Appropriation of Funds.** Contractor acknowledges that the Contract term may extend over multiple City fiscal years, and that work and compensation under this Contract is contingent on the City Council appropriating funding for and authorizing such work

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and compensation for those fiscal years. This Contract may be terminated at the end of the fiscal year for which sufficient funding is not appropriated and authorized. City is not obligated to pay Contractor for any amounts not duly appropriated and authorized by City Council.

**3.4 Price Adjustments.** Contractor pricing in Appendix A is valid through December 31, 2022. On or before January 1<sup>st</sup> of each year, Contractor will provide pricing for that calendar year. Such pricing shall not exceed a 5% increase from year to year

#### **ARTICLE 4 SUSPENSION AND TERMINATION**

**4.1 City's Right to Suspend for Convenience.** City may suspend all or any portion of Contractor's performance under this Contract at its sole option and for its convenience for a reasonable period of time not to exceed six (6) months. City must first give ten (10) days' written notice to Contractor of such suspension. City will pay to Contractor a sum equivalent to the reasonable value of the goods and/or services satisfactorily provided up to the date of suspension. City may rescind the suspension prior to or at six (6) months by providing Contractor with written notice of the rescission, at which time Contractor would be required to resume performance in compliance with the terms and provisions of this Contract. Contractor will be entitled to an extension of time to complete performance under the Contract equal to the length of the suspension unless otherwise agreed to in writing by the Parties.

**4.2 Right to Terminate for Convenience.** Either Party may, at its sole option and for its convenience, terminate all or any portion of this Contract by giving thirty (30) days' written notice of such termination to the other Party. The termination of the Contract shall be effective upon receipt of the notice by the terminating Party. After termination of all or any portion of the Contract, Contractor shall: (1) immediately discontinue all affected performance (unless the notice directs otherwise); and (2) complete any and all additional work necessary for the orderly filing of documents and closing of Contractor's affected performance under the Contract.

**4.3 City's Right to Terminate for Default.** Contractor's failure to satisfactorily perform any obligation required by this Contract constitutes a default. Examples of default include a determination by City that Contractor has: (1) failed to deliver goods and/or perform the services of the required quality or within the time specified; (2) failed to perform any of the obligations of this Contract; and (3) failed to make sufficient progress in performance which may jeopardize full performance.

**4.3.1** If Contractor fails to satisfactorily cure a default within thirty (30) calendar days of receiving written notice from City specifying the nature of the default, City may immediately cancel and/or terminate this Contract, and terminate each and every right of Contractor, and any person claiming any rights by or through Contractor under this Contract.

**4.4 Termination for Bankruptcy or Assignment for the Benefit of Creditors.** If Contractor files a voluntary petition in bankruptcy, is adjudicated bankrupt, or makes a general assignment for the benefit of creditors, the City may at its option and without further notice to, or demand upon Contractor, terminate this Contract, and terminate each and every right of Contractor, and any person claiming rights by and through Contractor under this Contract.

**4.5 Contractor's Right to Payment Following Contract Termination.** Upon termination, City agrees to pay the Contractor for all goods delivered or services actually performed prior to termination which meet the requirements of the Contract.

## **ARTICLE 5 ADDITIONAL CONTRACTOR OBLIGATIONS**

**5.1 Delay.** Contractor must immediately notify City in writing if there is, or it is anticipated that there will be, a delay in performance. The written notice must explain the cause for the delay and provide a reasonable estimate of the length of the delay. City may terminate this Contract as provided herein if City, in its sole discretion, determines the delay is material.

**5.1.1** If a delay in performance is caused by any unforeseen event(s) beyond the control of the parties, City may allow Contractor to a reasonable extension of time to complete performance, but Contractor will not be entitled to damages or additional compensation. Any such extension of time must be approved in writing by City. The following conditions may constitute such a delay: war; changes in law or government regulation; labor disputes; strikes; fires, floods, adverse weather or other similar condition of the elements necessitating cessation of the performance; inability to obtain materials, equipment or labor; or other specific reasons agreed to between City and Contractor. This provision does not apply to a delay caused by Contractor's negligent acts or omissions. Contractor is not entitled to an extension of time to perform if a delay is caused by Contractor's inability to obtain materials, equipment, or labor unless City has received, in a timely manner, documentary proof satisfactory to City of Contractor's inability to obtain materials, equipment, or labor, in which case City's approval must be in writing.

**5.2 Restrictions and Regulations Requiring Contract Modification.** Contractor shall immediately notify City in writing of any regulations or restrictions that may or will require Contractor to alter the material, quality, workmanship, or performance of the goods and/or services to be provided. City reserves the right to accept any such alteration, including any resulting reasonable price adjustments, or to cancel the Contract at no expense to the City.

**5.3 Records Retention and Examination.** Contractor shall retain, protect, and maintain in an accessible location all records and documents, including paper, electronic, and computer records, relating to this Contract for five (5) years after receipt of final payment by City under

this Contract. Contractor shall make all such records and documents reasonably available for inspection, copying, or other reproduction, and auditing by authorized representatives of City, including the Purchasing Agent or designee.

**5.4 Project Personnel.** Except as formally approved by the City, the key personnel identified in Contractor's bid or proposal shall be the individuals who will actually complete the work. Changes in staffing must be reported in writing by the City.

**5.4.1 Criminal Background Certification.** Contractor certifies that all employees working on this Contract have undergone a pre-employment screening process which includes, but is not limited to, a Nationwide Sex Offender and Criminal Search and a 10 panel drug screen. Contractor further certifies that all employees working on City premises shall be free from felony convictions.

**5.4.2 Photo Identification Badge.** Contractor shall provide a company photo identification badge to any individual assigned by Contractor or subcontractor to perform services or deliver goods on City premises. Such badge must be worn at all times while on City premises. City reserves the right to require Contractor to pay fingerprinting fees for personnel assigned to work in sensitive areas. All employees shall turn in their photo identification badges to Contractor upon completion of services and prior to final payment of invoice.

## **ARTICLE 6 INDEMNIFICATION AND INSURANCE**

### **6.1 Indemnification.**

**6.1.1.** Section B of Article 9.1 of Appendix C shall be modified, in part, to read as follows:

Conditions to our Indemnity. As a condition to our indemnification obligations you must (a) notify us in writing, as soon as you come aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow us to solely control the defense or settlement of the claim, subject to City Council approval for final settlements, in accordance with City Council Policy 000-09; (d) give us your reasonable information, cooperation and assistance; and (e) take all reasonable steps to mitigate losses incurred, including allowing us to exercise any and all of options set out in Section 11.4 of these Terms.

**6.1.2.** Article 11.1 of Appendix D shall be modified, in part, to read as follows:

Our General Indemnity. We will indemnify and hold you harmless from and against any and all third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises to the extent the claims are caused by our employees' gross negligence, recklessness, and willful misconduct, provided we are given prompt notice of any claim and, to the extent permitted by applicable law, the opportunity to control the defense and settlement of the claim, subject to City Council approval for final settlements, in accordance with City Council Policy 000-09.

## ARTICLE 7 CITY-MANDATED CLAUSES AND REQUIREMENTS

**7.1 Contractor Certification of Compliance.** By signing this Contract, Contractor certifies that Contractor is aware of, and will comply with, these City-mandated clauses throughout the duration of the Contract.

**7.1.1 Drug-Free Workplace Certification.** Contractor shall comply with City's Drug-Free Workplace requirements set forth in Council Policy 100-17, which is incorporated into the Contract by this reference.

**7.1.2 Contractor Certification for Americans with Disabilities Act (ADA) and State Access Laws and Regulations:** Contractor shall comply with all accessibility requirements under the ADA and under Title 24 of the California Code of Regulations (Title 24). When a conflict exists between the ADA and Title 24, Contractor shall comply with the most restrictive requirement (i.e., that which provides the most access). Contractor also shall comply with the City's ADA Compliance/City Contractors requirements as set forth in Council Policy 100-04, which is incorporated into this Contract by reference. Contractor warrants and certifies compliance with all federal and state access laws and regulations and further certifies that any subcontract agreement for this contract contains language which indicates the subcontractor's agreement to abide by the provisions of the City's Council Policy and any applicable access laws and regulations.

### **7.1.3 Non-Discrimination Requirements.**

**7.1.3.1 Compliance with City's Equal Opportunity Contracting Program (EOCP).** Contractor shall comply with City's EOCP Requirements. Contractor shall not discriminate against any employee or applicant for employment on any basis prohibited by law. Contractor shall provide equal opportunity in all employment practices. Prime Contractors shall ensure that their subcontractors comply with this program. Nothing in this Section shall be interpreted to hold a Prime Contractor liable for any discriminatory practice of its subcontractors.

**7.1.3.2 Non-Discrimination Ordinance.** Contractor shall not discriminate on

the basis of race, gender, gender expression, gender identity, religion, national origin, ethnicity, sexual orientation, age, or disability in the solicitation, selection, hiring or treatment of subcontractors, vendors or suppliers. Contractor shall provide equal opportunity for subcontractors to participate in subcontracting opportunities. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, or other sanctions. Contractor shall ensure that this language is included in contracts between Contractor and any subcontractors, vendors and suppliers.

**7.1.3.3 Compliance Investigations.** Upon City's request, Contractor agrees to provide to City, within sixty calendar days, a truthful and complete list of the names of all subcontractors, vendors, and suppliers that Contractor has used in the past five years on any of its contracts that were undertaken within San Diego County, including the total dollar amount paid by Contractor for each subcontract or supply contract. Contractor further agrees to fully cooperate in any investigation conducted by City pursuant to City's Nondiscrimination in Contracting Ordinance. Contractor understands and agrees that violation of this clause shall be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**7.1.4 Equal Benefits Ordinance Certification.** Unless an exception applies, Contractor shall comply with the Equal Benefits Ordinance (EBO) codified in the San Diego Municipal Code (SDMC). Failure to maintain equal benefits is a material breach of the Contract.

**7.1.5 Contractor Standards.** Contractor shall comply with Contractor Standards provisions codified in the SDMC. Contractor understands and agrees that violation of Contractor Standards may be considered a material breach of the Contract and may result in Contract termination, debarment, and other sanctions.

**7.1.6 Noise Abatement.** Contractor shall operate, conduct, or construct without violating the City's Noise Abatement Ordinance codified in the SDMC.

**7.1.7 Intentionally Deleted**

**7.1.8 Intentionally Deleted**

**7.1.9 Product Endorsement.** Contractor shall comply with Council Policy 000-41 which requires that other than listing the City as a client and other limited endorsements, any advertisements, social media, promotions or other marketing referring to the City as a user of a product or service will require prior written approval of the Mayor or designee. Use of the City Seal or City logos is prohibited.



**7.1.10 Business Tax Certificate.** Unless the City Treasurer determines in writing that a contractor is exempt from the payment of business tax, any contractor doing business with the City of San Diego is required to obtain a Business Tax Certificate (BTC) and to provide a copy of its BTC to the City before a Contract is executed.

**7.1.11 Equal Pay Ordinance.** Unless an exception applies, Contractor shall comply with the Equal Pay Ordinance codified in San Diego Municipal Code sections 22.4801 through 22.4809. Contractor shall certify in writing that it will comply with the requirements of the EPO.

**7.1.11.1 Contractor and Subcontract Requirement.** The Equal Pay Ordinance applies to any subcontractor who performs work on behalf of a Contractor to the same extent as it would apply to that Contractor. Any Contractor subject to the Equal Pay Ordinance shall require all of its subcontractors to certify compliance with the Equal Pay Ordinance in its written subcontracts.

## **ARTICLE 8 DISPUTE RESOLUTION**

**8.1 Mediation.** If a dispute arises out of or relates to this Contract and cannot be settled through normal contract negotiations, Contractor and City shall use mandatory non-binding mediation before having recourse in a court of law.

**8.2 Selection of Mediator.** A single mediator that is acceptable to both parties shall be used to mediate the dispute. The mediator will be knowledgeable in the subject matter of this Contract, if possible.

**8.3 Expenses.** The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including required traveling and other expenses of the mediator, and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties, unless they agree otherwise.

**8.4 Conduct of Mediation Sessions.** Mediation hearings will be conducted in an informal manner and discovery will not be allowed. The discussions, statements, writings and admissions will be confidential to the proceedings (pursuant to California Evidence Code sections 1115 through 1128) and will not be used for any other purpose unless otherwise agreed by the parties in writing. The parties may agree to exchange any information they deem necessary. Both parties shall have a representative attend the mediation who is authorized to settle the dispute, though City's recommendation of settlement may be subject to the approval

of the Mayor and City Council. Either party may have attorneys, witnesses or experts present.

**8.5 Mediation Results.** Any agreements resulting from mediation shall be memorialized in writing. The results of the mediation shall not be final or binding unless otherwise agreed to in writing by the parties. Mediators shall not be subject to any subpoena or liability, and their actions shall not be subject to discovery.

## **ARTICLE 9 MISCELLANEOUS**

**9.1 Independent Contractors.** Contractor and any subcontractors employed by Contractor are independent contractors and not agents of City. Any provisions of this Contract that may appear to give City any right to direct Contractor concerning the details of performing or providing the goods and/or services, or to exercise any control over performance of the Contract, shall mean only that Contractor shall follow the direction of City concerning the end results of the performance.

**9.2 Governing Law.** The Contract shall be deemed to be made under, construed in accordance with, and governed by the laws of the State of California without regard to the conflicts or choice of law provisions thereof. This supersedes any conflicting provisions in any documents that comprise the Contract, including all exhibits and appendices.

**9.3 Venue.** The venue for any suit concerning solicitations or the Contract, the interpretation or application of any of its terms and conditions, or any related disputes shall be in the County of San Diego, State of California. This supersedes any conflicting provisions in any documents that comprise the Contract, including all exhibits and appendices.

**9.4 Conflicts Between Terms.** If this Contract conflicts with an applicable local, state, or federal law, regulation, or court order, applicable local, state, or federal law, regulation, or court order shall control. Varying degrees of stringency among the main body of this Contract, the exhibits or attachments, and laws, regulations, or orders are not deemed conflicts, and the most stringent requirement shall control. Each party shall notify the other immediately upon the identification of any apparent conflict or inconsistency concerning this Contract.

**9.5 Survival of Obligations.** All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with this Contract, as well as all continuing obligations indicated in this Contract, shall survive, completion and acceptance of performance and termination, expiration or completion of the Contract.

**9.6 No Third Party Beneficiaries.** Except as may be specifically set forth in this Contract, none of the provisions of this Contract are intended to benefit any third party not specifically

referenced herein. No party other than City and Contractor shall have the right to enforce any of the provisions of this Contract.

**9.7 Actions of City in its Governmental Capacity.** Nothing in this Contract shall be interpreted as limiting the rights and obligations of City in its governmental or regulatory capacity.

**9.8 California Public Records Act.** Contractor acknowledges that any information submitted in this Contract is a public record subject to disclosure unless the City determines that a specific exemption in the California Public Records Act (CPRA) applies. If the contractor submits information clearly marked confidential or proprietary, the City may protect such information and treat it with confidentiality to the extent permitted by law. However, it will be the responsibility of the contractor to provide to the City the specific legal grounds on which the City can rely in withholding information requested under the CPRA should the City choose to withhold such information. General references to sections of the CPRA will not suffice. Rather, the contractor must provide a specific and detailed legal basis, including applicable case law, that clearly establishes the requested information is exempt from the disclosure under the CPRA. If the contractor does not provide a specific and detailed legal basis for requesting the City to withhold contractor's confidential or proprietary information at the time of contractor's submittal, City will release the information as required by the CPRA and contractor will hold the City, its elected officials, officers, and employees harmless for release of this information. It will be the contractor's obligation to defend, at proposer's expense, any legal actions or challenges seeking to obtain from the City any information requested under the CPRA withheld by the City at the contractor's request. Furthermore, the contractor shall indemnify and hold harmless the City, its elected officials, officers, and employees from and against any claim or liability, and defend any action brought against the City, resulting from the City's refusal to release information requested under the CPRA which was withheld at contractor's request. Nothing in the Contract resulting from this proposal creates any obligation on the part of the City to notify the contractor or obtain the contractor's approval or consent before releasing information subject to disclosure under the CPRA.

## **ARTICLE 10 CONTRACT DOCUMENTS**

**10.1 Contract Documents.** This Agreement including its exhibits and appendices completely describes the goods and services to be provided.

**10.2 Counterparts.** This Agreement may be executed in counterparts, which when taken together shall constitute a single signed original as though all Parties had executed the same page.

**ARTICLE 11**  
**INSURANCE REQUIREMENTS FOR CONTRACTORS**

Without limiting Contractor's indemnification obligations to the City, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

**11.1 Minimum Scope of Insurance** Coverage shall be at least as broad as:

**11.1.1** Commercial General Liability, Occurrence form.

**11.1.2** Automobile Liability covering all owned, non owned, and hired auto.

**11.1.3** Workers' Compensation, as required by State of California with statutory limits and Employer's Liability Insurance.

**11.1.4** Professional Liability (Errors & Omissions) appropriate to the professional services provided by Contractor under this contract.

**11.2 Minimum Limits of Insurance** Contractor shall maintain limits no less than:

**11.2.1** Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability (on a separate policy outside General Liability): \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.

**11.2.2** Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.

**11.2.3** Workers Compensation and Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of the City of San Diego.

**11.2.4** Professional Liability (Errors & Omissions): \$2,000,000 per occurrence or claim with an aggregate limit of not less than \$4,000,000. Coverage shall include contractual liability. This coverage shall be maintained for a minimum of three (3) years following termination or completion of Contractor's work pursuant to the Contract.

**11.3 Self-Insured Retentions** Contractor declares that their commercial general liability insurance policies contain self-insured retention endorsements. Contractor declares that all self-insured retentions will be paid by Contractor.

#### **11.4 Other Insurance Provisions**

The insurance policies are to contain, or be endorsed to contain, the following provisions:

**11.4.1 Additional Insured Endorsement** The City its officers, officials, employees, and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations and automobiles owned, leased, hired or borrowed by or on behalf of the Contractor.

**11.4.2 Waiver of Subrogation.** Contractor hereby grants to City a wavier of any right, outside of claims due to City negligence, to subrogation with the Workers Compensation insurer of said Contractor may acquire against City by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the City has received a waiver of subrogation endorsement from the insurer.

**11.4.3 Primary Insurance Endorsement** For any claims related to this project, the Contractor's insurance coverage, including any excess liability policies, shall be primary insurance as respects the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it unless due to the negligence of the City, its officers, officials, employees and volunteers

**11.4.4 Notice of Cancellation** Contractor shall endeavor to provide thirty (30) days prior written notice in the event of cancellation of its insurance policies in the event a gap in coverage would be reasonably expected to occur.

**11.4.5 Severability of Interest Clause** Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

**11.4.6 Claims Made Policies (Professional Liability)** Retroactive Date must be before the date of the contract or the beginning of contract work. Insurance must be maintained and evidence of insurance must be provided for at least (3) three years after completion of the contract of work. If coverage is canceled or non-renewed and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, Contractor must purchase "extended reporting" coverage for a minimum of three (3) years after completion of work.

#### **Verification of Coverage**

Upon request, Contractor shall furnish City with original certificates and amendatory

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endorsements or copies of the applicable policy language effecting coverage required by this clause. All certificates and endorsements are to be received and approved by City before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive Contractor's obligation to provide them. City reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.

### **Special Risks or Circumstances**

**City reserves the right to request modifications to these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage or other special circumstances**

## **General Provisions**

### **11.5 Qualifying Insurers**

Except for self-insured policies, all required policies of insurance listed in this Contract shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

### **11.6. No Limitation of Obligations**

The foregoing insurance requirements as to the types and limits of insurance coverage to be maintained by Contractor, and any approval of said insurance by the City are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Contractor pursuant to the Contract, including, but not limited to, the provisions concerning indemnification.

### **11.7 Self-Insurance**

Contractor's utilization of self-insurance shall not in any way limit liabilities assumed by Contractor under the Contract.

### **11.8 Claims Made Coverage**

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

**11.8.1** The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).

11.8.2 Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract.

11.8.3 If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least three years to report claims arising in connection with the Contract.


11.8.4 The policy allows for reporting of circumstances or incidents that might give rise to future claims.

**11.9 Subcontractors' Insurance (Not Applicable – Contractor is self-performing and will not use subcontractors for this contract)**

IN WITNESS WHEREOF, this Agreement is executed by City and Contractor acting by and through their authorized officers.

CONTRACTOR  
Life Technologies Corporation

CITY OF SAN DIEGO  
A Municipal Corporation

By:  \_\_\_\_\_

By:  \_\_\_\_\_

Name: **Peter Waterman**

Name: **Claudia C. Jbara**

Title: **Director**

Director, Purchasing & Contracting

Date: **09/29/2022**

Date: **December 13, 2022**

Approved as to form this 14<sup>th</sup> day of December, 2022  
MARA W. ELLIOTT, City Attorney

By:  \_\_\_\_\_  
Deputy City Attorney

**MARA W. ELLIOTT**  
Print Name

## EXHIBIT A SCOPE OF WORK

### A. OVERVIEW

The Forensic Biology Unit of the San Diego Police Department Crime Laboratory is responsible for performing DNA analysis on samples associated with police investigations.

Each step of DNA analysis process requires commercial kits (chemical reagents) and consumables that are purchased from a vendor and are used on specialized proprietary instrumentation. Yearly maintenance and services contracts are required to maintain the instruments used in the DNA analysis process.

Life Technologies Corporation shall provide commercial test kits, including DNA quantification and human identity testing kits, along with the associated consumables. Life Technologies Corporation shall also provide the maintenance and repair service for the upkeep of the instrumentation and consumables.

Costs for products and equipment services purchased from **Life Technologies Corporation** are provided by the company each calendar year. Costs of products (kits, reagents, and consumables) and services are expected to adjust yearly, but shall not exceed 5% increase from year to year (Appendix A). Services delivered by **Life Technologies Corporation** are agreed to through service contracts that are for a single service, or contracts that span a time frame of one or more years (Appendix B). Please also see Appendices C (2022 Kit and Consumables Pricing Agreement) and D (Instrument Service Terms and Conditions). Services provided on-site for remedial repair may include parts, labor, and travel costs. The City shall approve any parts, labor, and travel costs prior to performance of any services outside of preventive service visits.

The Forensic Biology Unit may also purchase additional items from **Life Technologies Corporation** in the future that are necessary for the unit to perform forensic DNA testing. This may include, but is not limited to instrumentation (and service on this instrumentation), software, test kits, or consumable items associated with emerging or improved technologies that are not itemized in section B. Life Technologies Corporation shall not be compensated for the additional instrumentation, test kits, or services unless the costs are approved, in writing, by the City. For the avoidance of doubt, a purchase order issued by the City is considered the City's written approval of costs.

### B. REQUIREMENTS AND TASKS

**Life Technologies Corporation** shall provide the following list of kits, reagents, and consumables as needed. These products will be provided in accordance with the terms and conditions of sale described in Appendix C unless otherwise indicated by Article 5:

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SKU# 4311320 HI-DI FORMAMIDE BOTTLE 25 ML  
SKU# 4311971 FG, OPTICAL ADHESIVE COVERS  
SKU# 4312063 96-WELL SPLASH FREE SUPPORT  
SKU# 4316813 BULKPACK 96-WELL RXN PLATES  
SKU# 4323032 FG, OPTICAL CAP (8 CAPS/STRIPS)  
SKU# 4349180 FG,7500 SPECTRAL DYE CAL KIT  
SKU# 4350584 96 WELL RNASE P VERIF PLATE NO PAD  
SKU# 4387746 QUANTIFILER DUO DNA QUANT. KIT  
SKU# 4387936 NUCLEASE-FREE WATER 4X1 LITER  
SKU# 4393715 POP-4 (384) POLYMER 3500 SERIES  
SKU# 4393718 CONDITIONING REAGNT 3500SERIES  
SKU# 4393927 ANODE BFFR CONTAINR 3500SERIES  
SKU# 4404683 CAPILLARY ARRAY 8-CAP 36CM RUO  
SKU# 4408256 CATHODE BFR CONTAINR 3500 SER  
SKU# 4408399 GENESCAN-600 LIZ SIZE STD V2.0  
SKU# 4410715 SEPTA CATHODE BUFFER CNTR 3500 RUO  
SKU# 4412614 SEPTA,96 WELL RUO 3500  
SKU #N8010535 MICROAMP CAPS, 8 CAPS/STRIP  
SKU# 4425042 DS-36 MATRIX STANDARD KIT (DYE SET J6)  
SKU# 4476135 FG, GLOBALFILER KIT  
SKU# 4484678 YFILER PLUS KIT (100X)  
SKU# N8010541 9600/9700 MICROAMP TRAY FOR TUBES W/CAP  
SKU# N8010612 AUTOCLAVED RXN TUBES W/ CAP, 0.2ML  
SKU #4482910 QUANTIFILER TRIO KIT  
SKU #A25019 HID qPCR CALIBRATION PLATES  
SKU #100052500 LMP, HALOGEN NEW REFLECTOR RC EACH

Additional human identity testing kts or associated consumables may be required based on the needs of the laboratory or as required for troubleshooting, maintaining, or servicing the instruments listed below.

Agreement  
Effective: 2019-05-02  
OCA Document No. 2802733\_2

**Life Technologies Corporation** shall provide support for the instruments listed in Appendix B. The maintenance and support services will be provided in accordance with the terms and conditions described in Appendix D unless otherwise indicated by Article 5.

If the City wishes to add instruments to Appendix B, the Parties will execute an amendment to this Agreement.

Report Date : 13-Jan-2022

TO ORDER:

**PRICING AGREEMENT NO.:E4597389**

To ensure correct pricing and terms, the above quotation number must appear on all orders and correspondence.

**FROM: 01/14/2022 THROUGH:12/31/2022**  
EXCEPT WHERE NOTED BELOW

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TERMS:Net 30

**FOB: Shipping Point**

**Life Technologies Corporation**  
3175 Staley Road  
Grand Island,New York 14072 USA  
Fax No:1-800-331-2286  
To Order:1-800-955-6288  
Email: [CustomerCare@thermofisher.com](mailto:CustomerCare@thermofisher.com)  
[www.thermofisher.com/ordersupport](http://www.thermofisher.com/ordersupport)

To: SAN DIEGO POLICE DEPT  
FOR:  
SAN DIEGO POLICE DEPT  
FORENSIC SCIENCE  
1401 BROADWAY  
  
SAN DIEGO  
CA 92101 USA

ATTN:

**WE ARE PLEASED TO QUOTE ON YOUR REQUIREMENT AS FOLLOWS**

Line#	CC*	SKU # / PPL	DESCRIPTION	MINIMUM QUANTITY	PRICE OR % DISCOUNT	
					DISCOUNT % / FIXED PRICE	UNIT PRICE
1	D	4484678	YFILER PLUS KIT (100X) EACH	1	8.00%	\$3,629.40
2		4404683	CAPILLARY ARRAY 8-CAP 36CM RUO EACH	1	9.00%	\$1,539.72
3	D	4408256	CATHODE BFR CONTAINR 3500 SER EACH	1	7.00%	\$177.63
4	D	4408399	GENESCAN-600 LIZ SIZE STD V2.0 EACH	1	7.00%	\$483.60
5		4410715	SEPTA CATHODE BUFFER CNTR 3500 RUO	1	7.00%	\$430.59
6		4412614	SEPTA,96 WELL RUO 3500 EACH	1	7.00%	\$430.59
7	D	4425042	DS-36 MATRIX STANDARD KIT (DYE SET J6)	1	10.00%	\$177.30
8	D	4476135	FG,GLOBALFILER KIT EACH	1	8.00%	\$4,636.80
9		N8010535	MICROAMP CAPS, 8 CAPS/STRIP EACH	1	15.00%	\$96.05
10		N8010541	9600/9700 MICROAMP TRAY FOR TUBES W/CAP	1	20.00%	\$56.20
11		N8010612	AUTOCLAVED RXN TUBES W/ CAP, 0.2ML	1	15.00%	\$259.25
12		100052500	LMP,HALOGEN NEW REFLECTOR RC EACH	1	10.00%	\$108.00
13	D	4311320	HI-DI FORMAMIDE BOTTLE 25 ML	1	10.00%	\$42.66
14		4311971	FG,OPTICAL ADHESIVE COVERS EACH	1	15.00%	\$242.25

**PRICING AGREEMENT NO.: E4597389**

15		4312063	96-WELL SPLASH FREE SUPPORT BASE	1	15.00%	\$90.95
16		4316813	BULKPACK 96-WELL RXN PLATES, 50XN8010560	1	20.00%	\$2,480.00
17		4323032	FG,OPTICAL CAP (8 CAPS/STRIPS) EACH	1	15.00%	\$119.85
18	D	4349180	FG,7500 SPECTRAL DYE CAL KIT EACH	1	15.00%	\$1,079.50
19	D	4350584	96 WELL RNASE P VERIF PLATE NO PAD	1	6.00%	\$789.60
20	D	4387746	QUANTIFILER DUO DNA QUANT. KIT EACH	1	14.00%	\$2,661.70
21		4387936	NUCLEASE-FREE WATER 4X1 LITER EACH	1	20.00%	\$167.20
22	D	4393715	POP-4 (384)POLYMER 3500 SERIES EACH	1	7.00%	\$230.64
23	D	4393718	CONDITIONING REAGNT 3500SERIES EACH	1	9.00%	\$33.13
24	D	4393927	ANODE BFFR CONTAINR 3500SERIES EACH	1	7.00%	\$132.99
25	D	4482910	QUANTIFILER TRIO KIT EACH	1	8.00%	\$1,936.60
26		A25019	HID 7500 CALIBRATION KIT EACH	1	0.00%	\$1,260.00

\* Items flagged with H or D require special handling and may be subject to an additional charge

**TERMS AND CONDITIONS OF SALE**

This quotation is for products and services sold by Life Technologies Corporation, a Thermo Fisher Scientific company. This quotation, and the terms and conditions of sale found at [www.thermofisher.com/termsandconditions](http://www.thermofisher.com/termsandconditions) ("thermofisher.com Terms and Conditions of Sale") that apply to the products and services listed on this quotation, are incorporated by reference into this quotation and any resulting contract. By issuing a purchase order or otherwise ordering or accepting product(s) or services, you expressly confirm that you intend to be bound by and agree to thermofisher.com Terms and Conditions of Sale to the exclusion of all other terms we do not expressly agree to in writing, and that the purchase and sales transaction between you and us is subject to and will be governed by thermofisher.com Terms and Conditions of Sale and the terms of this quotation.

Customers may be required to evaluate as a discount, for cost-reporting purposes, the value of any Product listed as \$0.00 on any invoice. The Product listed as \$0.00 represents an in-kind discount and is included in the total fair market value price for the instrument product.

If you have any questions, please visit our website at [www.thermofisher.com](http://www.thermofisher.com).

APPENDIX B

Instrument	Serial Number	Contract/Warrant #	Contract/Warranty End Date	Coverage	2022 Pricing	Not to Exceed in 2022	Not to Exceed in 2023	Not to Exceed in 2024	Not to Exceed in 2025	Not to Exceed in 2026	Notes
Verti Thermal Cycler	2990231274	35513744	1/12/2023	AB RC Support with biannual MDTV/MDTM Service	\$ 2,547.84	\$ 2,675.23	\$ 2,808.99	\$ 2,949.44	\$ 3,096.92		
Verti Thermal Cycler	2990231421	35513744	1/12/2023	AB RC Support with biannual MDTV/MDTM Service	\$ 2,547.84	\$ 2,675.23	\$ 2,808.99	\$ 2,949.44	\$ 3,096.92		
Verti Thermal Cycler	2990236142	35513744	1/12/2023	AB RC Support with biannual MDTV/MDTM Service	\$ 2,547.84	\$ 2,675.23	\$ 2,808.99	\$ 2,949.44	\$ 3,096.92		
QUANTSTUDIO 5, 0.2ML BLOCK	272929609	35513497	11/9/2023	AB Assurance 1PM	\$ 5,280.00	\$ 5,994.00	\$ 6,923.70	\$ 7,269.89	\$ 7,633.38	*Coverage purchased with instrument	
QUANTSTUDIO 5, 0.2ML BLOCK	272927562	35491872	2/22/2023	AB Assurance 1PM	\$ 5,280.00	\$ 5,994.00	\$ 6,923.70	\$ 7,269.89	\$ 7,633.38	*Coverage purchased with instrument	
3500 Genetic Analyzer	26199-180	35498946	5/13/2022	AB Assurance 1PM	\$ 11,590.00	\$ 12,127.50	\$ 12,793.88	\$ 13,370.57	\$ 14,039.10	Renewal quote number 40612853 attached	
3500 Genetic Analyzer	26198-080	35498946	5/13/2022	AB Assurance 1PM	\$ 11,590.00	\$ 12,127.50	\$ 12,793.88	\$ 13,370.57	\$ 14,039.10	Renewal quote number 40612853 attached	
					\$ 45,851.66	\$ 48,143.93	\$ 50,551.12	\$ 53,078.68	\$ 55,792.61		

## APPENDIX C

### TERMS AND CONDITIONS OF SALE

Thank you for your interest in purchasing our products. We value your business and our goal is to make your purchasing experience as smooth as possible. If you have any questions about our quotation or ordering process, please refer to the "Support" section of our website. Unless otherwise expressly agreed in writing, your purchase of products is subject to the following terms and conditions:

#### 1. Agreement Terms

1.1 General Terms. These terms and conditions ("Terms"), our quotation (if any) and Supplementary Terms, if any, comprise the agreement ("Agreement") between you and Thermo Fisher Scientific. Unless your order is subject to a valid, written, executed agreement between you and Thermo Fisher Scientific or any of the Thermo Fisher Scientific group companies, in which case such agreement applies, you agree to accept and be bound by the Agreement by ordering products on thermofisher.com or if you receive ordering or sales documents that reference these Terms. This Agreement is the complete and exclusive contract between us with respect to your purchase of the products.

1.2 Supplementary Terms. Some of our products are subject to additional software licenses, limited use label licenses or other written contract terms that you will not find here ("Supplementary Terms"). You will find any Supplementary Terms that apply to your purchase in our quotation to you, on thermofisher.com, or in literature that accompanies the product. You can also obtain copies from Customer Services.

1.3 Terms Conflict. If any conditions within the Agreement documents conflict with each other, we will give them the following priority: (a) the quotation; (b) any applicable Supplementary Terms; and (c) finally these Terms. We expressly reject any different terms or provisions contained in any document you provide, and if the terms and conditions in this Agreement differ from the terms of your offer, this Agreement will serve as the governing terms for our contract.

1.4 When Agreement takes Effect. The Agreement between us is created when you receive email confirmation that we have accepted your order.

#### 2. Price

2.1 Determining Price. We may change our prices at any time without notice. Prices we quote you are valid for 30 days, unless we state otherwise in writing. If no price has been specified or quoted to you, the price will be the product price on thermofisher.com in effect at the time we accept your order.

2.2 Taxes and Fees. Our product prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice. If you claim any exemption, you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

2.3 Delivery Fees; Freight Policy. You are also responsible for standard delivery and handling charges, if applicable, and our product prices do not include such charges unless expressly stated. If we pay such charges, we will also add these to your invoice.

#### 3. Cancellation and Changes

Once you have placed your order, you cannot cancel or change it without our written consent.

#### 4. Payment

4.1 Payment Terms. We will invoice you for the product price and all other charges due when we ship you the products. Unless we have agreed otherwise in writing, you will pay us within 30 days from your receipt of invoice. Each order is a separate transaction, and you may not off-set payments, including from one order against another. We reserve the right to require you to make full or partial payment in advance, or provide other security to our satisfaction, if we believe in good faith that your financial condition does not justify the payments terms otherwise specified. You will make all payments

in the currency specified in our invoice to you. You may make payments via ACH or other electronic interface that directly exchanges funds between your bank account and ours; checks mailed to one of our lockbox remittance locations; or a credit card at the time of purchase. We will not accept credit card payments made after the time of your purchase.

4.2 Late Payment. If you are late in making payment then, without affecting our other rights you will make payment to us, upon our demand, of a late-payment charge. The late payment charge will be calculated as interest on the sums due from the payment due date until you make payment in full, at the rate of 1.5% per month, or, if less, the maximum amount allowed by law and will also include our reasonable costs of collection (including collection agency fees and attorneys' fees). We also reserve the right to cancel or stop delivery of products in transit and withhold shipments in whole or in part if you do not pay us when due, or if you otherwise do not perform your obligations in this Agreement.

## 5. Delivery

5.1 Delivery. We will ship products to the destination you specify in your order, FCA Incoterms 2010 our shipping point. By agreeing to these Terms, you (i) give your consent for us to arrange for carriage for all products supplied hereunder on your behalf; and (ii) waive your right to arrange carriage or to give us any specific instructions regarding carriage. We may, in our discretion, make partial shipments and invoice each shipment separately. Our shipping dates are approximate only, and we will not be liable for any loss or damages resulting from any delay in delivery. You may not refuse delivery or otherwise be relieved of any obligations as the result of such delay. If our delivery of a product to you is delayed due to any cause within your control, we will place the delayed products in storage at your risk and expense.

## 6. Risk of Loss and Title

Excluding software incorporated within or forming part of a product, which we or our licensors continue to own, title to and risk of loss of the products will pass to you when we load them onto the commercial carrier at our facility.

## 7. Returns and Shortages

7.1 Returns. Customer Services must pre-authorize all product returns. Customer Services will approve return of any product that is damaged or defective on receipt, provided you contact Customer Services within five days after receiving the product and provided such damage or defect has not been caused by any failure by you or the carrier to handle or store products using reasonable care or as otherwise indicated on the label. If you do not contact us within this five day period, we will deem the product to be accepted, but you will not lose any warranty rights.

7.2 Product-Credit Eligibility. If we exercise our discretion to authorize a product for return then the product must arrive at our facilities in a condition satisfactory for resale. Any return not due to our error is subject to a restocking charge of 25% of the sale price. We do not credit shipping charges. You will not receive credit for any product returned without our prior consent.

## 8. Warranties

8.1 Limited Warranties for Consumables and General Labware. Unless a different warranty is included in applicable Supplementary Terms or product literature or on the relevant thermofisher.com product pages, we warrant that each consumable and item of general labware will meet its specifications in our published catalogs or associated Supplementary Terms. This warranty lasts from the time we ship the consumable or item of general labware until the earlier of: (a) the consumable's or item of general labware's expiry or "use by" date; and (b) its specified number of uses. If we do not specify the expiry date, the number of uses, or a different warranty period, the warranty will last for twelve (12) months from the date we ship the product.

8.2 Limited Warranties for Instruments. Unless a different warranty is included in applicable Supplementary Terms, or in the applicable quotation, we warrant that instruments will be free of defects in materials and workmanship, when subjected to normal, proper and intended usage by properly trained personnel, for twelve (12) months from the date we ship the instrument to you, or in the case of instruments that require installation by our personnel, twelve (12) months from



installation, but in no event longer than fifteen (15) months from the date we ship the instrument to you.

8.3 Limited Warranty for Spare Parts. We also warrant that spare parts you purchase from us and that we install, or are installed by a company we have certified as an authorized installer, will be free of defects in materials and workmanship for three (3) months from the date we deliver them, or, if longer, the original warranty period of the instrument in which the part is installed. We do not provide warranties for parts that you do not purchase from us or that we do not install. These parts are provided "as is".

8.4 Exclusions. In addition to our exclusion for third party products as set out in Section 8.7 of these Terms, our warranties do not apply to (a) normal wear and tear; (b) accident, disaster or event of force majeure; (c) your misuse, fault or negligence; (d) causes external to the products such as, but not limited to, power failure or electrical power surges; (e); instruments sold to you as 'used' products; (f) installation, removal, use, maintenance, storage, or handling in an improper, inadequate, or unapproved manner by you or any third party (including the carrier), such as, but not limited to, failure to follow our instructions or operating guidelines, or protocols, operation outside of stated environmental or use specifications, or operation or contact with unapproved software, materials, chemicals or other products; or (g) products manufactured in accordance with specifications you gave us. **ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THE AFFECTED PRODUCTS.**

If we determine that products for which you requested warranty services are not covered by the warranty, or if we provide repair services or replacement parts that are not covered by this warranty, you will pay or reimburse us for all costs of investigating and responding to such request at our then prevailing time and materials rates.

8.5 Limitations.

(A) OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER AND YOU CANNOT TRANSFER THEM. OUR OBLIGATION TO REPAIR OR REPLACE A PRODUCT IS YOUR SOLE REMEDY.

(B) EXCEPT AS OTHERWISE STATED, WE DISCLAIM ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE PRODUCTS, INCLUDING WITHOUT LIMITATION ALL IMPLIED WARRANTIES

(a) OF MERCHANTABILITY;

(b) OF FITNESS FOR ANY PARTICULAR PURPOSE; AND/ OR

(c) THAT THE PRODUCTS ARE ERROR-FREE OR WILL ACCOMPLISH ANY PARTICULAR RESULT.

8.6 Remedies. During the applicable warranty period only, for products not meeting our warranty, we agree, in our sole discretion, to repair or replace the non-conforming product and/or provide additional parts as reasonably necessary to comply with our warranty obligations, but you must first promptly notify us in writing when you discover any defect or non-conformance, and include in the notice clear details of your warranty claim. After our review, assuming we authorize the product return, we will provide you with service data and/or a Return Material Authorization ("RMA"), which may include biohazard decontamination procedures and other product-specific handling instructions that you must follow. For valid product warranty claims timely made in accordance with this Agreement, you must return the non-conforming products to us, unless we agree otherwise, and we will prepay the shipping costs. For instruments only, we may choose to provide you with new or refurbished replacement parts. All replaced parts will become our property. We will ship your repaired or replacement products according to our Delivery terms in Section 5 of these Terms.

8.7 Third Party Products. We do not support or make any warranties about products manufactured or supplied by third parties that you purchase through any of our sales channels. When you buy a third party product, we will let you know

that this purchase is governed by the third-party's own contract terms. You must look directly to the relevant third-party manufacturer for product support, warranties, and to make warranty claims. We agree, however, to assign to you any warranty rights we may receive from the original manufacturer or third party supplier, to the extent the original manufacturer or third party supplier allows.

## **9. Indemnification**

### **9.1 Our Indemnity.**

(A) **Our Infringement Indemnity.** We will defend and indemnify you against infringement damages finally awarded in any legal action brought by a third party against you alleging infringement of any intellectual property rights owned by third parties arising directly and solely from a product, as manufactured and provided by us to you, but always excluding use and/or combination of such product with other products or components. This infringement indemnity does not apply to (a) claims that arose based on your failure to comply with the Agreement; (b) claims that arose based on your failure to acquire any applicable additional intellectual property rights related to your use of the products ("Additional Rights"); (c) products that we made, assembled or labeled in reliance upon your instructions, specifications, or other directions; (d) your use or resale of products; (e) modifications made by you or any third party; or (f) products originating from third parties.

THIS INDEMNITY IS OUR ONLY LIABILITY TO YOU, AND, SUBJECT TO SECTION 11.4 OF THESE TERMS, YOUR ONLY REMEDY, FOR ANY INFRINGEMENT OR CLAIMED INFRINGEMENT OF THIRD PARTY INTELLECTUAL PROPERTY RIGHTS BY OR IN CONNECTION WITH ANY PRODUCT.

(B) **Conditions to Our Indemnity.** As a condition to our indemnification obligations you must (a) notify us in writing, as soon as you become aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) allow us to solely control the defense or settlement of the claim; (d) give us your reasonable information, co-operation and assistance; and (e) take all reasonable steps to mitigate losses incurred, including allowing us to exercise any and all of options set out in Section 11.4 of these Terms.

9.2 **Your Indemnity of Us.** If a third party makes a claim against us for infringement of its intellectual property rights based on (a) our manufacture or sale of a product or custom product we make under your instructions, specifications, or other directions, or using materials that you provide to us (b) your failure to comply with the Agreement, (c) your failure to acquire any applicable Additional Rights, or (d) your modification, use or resale of a product, then you will indemnify and hold us harmless from and against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys' fees and other costs of defending and/or settling any action) that we may have to pay as a result of the claim.

## **10. Software**

10.1 **Definitions.** With respect to any software products incorporated in or forming a part of our products, you understand and agree that we are licensing such software products and not selling them, and that the words "purchase", "sell" or similar or derivative words are understood and agreed to mean "license", and that the word "you" is understood and agreed to mean "licensee". We, or our licensor, as applicable, retain all rights and interest in software products we provide to you.

10.2 **License.** We hereby grant to you a royalty-free, non-exclusive, nontransferable license, without power to sublicense, to use software we provide to you under this Agreement solely for your own internal business purposes on the hardware products we provide you hereunder, and to use the related documentation solely for your own internal business purposes. This license will automatically terminate when your lawful possession of the associated hardware products provided hereunder ceases, unless earlier terminated as provided in this Agreement.

10.3 **Restrictions.** You agree to hold in confidence and not to sell, transfer, license, loan or otherwise make available in any form to third parties the software products and related documentation provided hereunder. You may not disassemble, decompile or reverse engineer, copy, modify, enhance or otherwise change or supplement the software products provided hereunder without our prior written consent. We will be entitled to terminate this license if you fail to comply with any term or condition herein.

10.4 Return of Software and Documentation. You agree, upon termination of this license, immediately to return to us all software products and related documentation provided hereunder and all copies and portions thereof.

10.5 Third Party Software. The warranty and indemnification provisions set forth in this Agreement will not apply to third party owned software products we provide you. We agree, however, to assign to you any warranty rights we may receive from the original developer or third party supplier, to the extent the original developer or third party supplier allows.

## 11. Intellectual Property

11.1 Use Limitations. As between you and us, we exclusively own all intellectual property rights relating to our products and services. Unless we expressly state otherwise in Supplementary Terms, our sale of products to you grants you only a limited, nontransferable right under our intellectual property to use the quantity of products purchased from us for your internal research purposes. No right to transfer, reverse engineer, decompile, disassemble, distribute, or resell our products or any of their components is conveyed expressly, by implication, or by estoppel. Unless expressly permitted by us in writing, you will not modify, change, remove, cover or otherwise obscure any of our brands, trade or service marks on the products. Nothing in the Agreement limits our ability to enforce our intellectual property rights.

11.2 Commercial Applications; Additional Rights. Unless we expressly state otherwise in Supplementary Terms, we give no rights to use our products in any commercial application, including manufacturing, quality control, commercial services such as reporting the results of your activities for a fee or other consideration, or in vitro diagnostic uses, ex vivo or in vivo therapeutic uses, or any type of consumption by or application to humans or animals. If you need commercial use rights in respect of our products (including the right to perform fee-for services), please contact our out-licensing department at [outlicensing@thermofisher.com](mailto:outlicensing@thermofisher.com). Where your use of our product is outside the scope of the Agreement, it is solely your responsibility to acquire Additional Rights.

11.3 Intellectual Property Ownership. Unless otherwise specified in applicable Supplementary Terms, we exclusively own all intellectual property rights in any inventions (patentable or otherwise), discoveries, improvements, data, know-how, or other results that are conceived, developed, discovered, reduced to practice, or generated by or for us, or jointly by you and us, in relation to processes, designs and methods utilized in manufacture of a custom product. You agree to transfer and assign to us all your right, title, and interest in and to any joint intellectual property. At our request and at our expense, you will help us secure and record our rights in such intellectual property.

11.4 Intellectual Property Infringement. We want to avoid claims of intellectual property infringement. If we believe a product we have sold to you may be subject to a claim for intellectual property infringement, you must allow us (at our option) to either (a) secure for you the right to continue using the product; (b) substitute the product with another suitable product with similar functionality; or (c) tell you to return the product to us and we will refund to you the price you paid. In the case of instruments, we will take off a reasonable amount for the instrument's use, damage or because it is now out of date or out of use.

## 12. Custom Products

12.1 Declining to Make or Deliver. If you ask us to manufacture a custom product, we may decline to design or manufacture that product at any stage of the process if the product is unsuitable or commercially impractical to manufacture as specified. If so, we will notify you, and you will not be obligated to pay any fees for any expenses we incurred in connection with the declined product. If a custom component or material fails, we may delay or cancel a custom product's delivery without liability to us.

12.2 Your Responsibilities. By submitting an order for a custom product, you represent and agree that you (a) have given us all information you know of regarding any biological, radiological, and chemical hazards associated with the handling, transport, exposure to, or other use of the materials you supply to us; and (b) have the requisite rights, including but not limited to any necessary intellectual property rights, to instruct manufacture of such product.

## 13. Instrument-Related Services

When you purchase an instrument, we may install it and provide training, maintenance, repairs, or any other services that you and we expressly agree on ("Instrument Services"). We also offer annual and other instrument-service plans. All Instrument Services are subject to our Instrument Services Supplementary Terms. For full details of our instrument-service plans and to obtain a copy of our Instrument Services Supplementary Terms, please check our website and/or contact Customer Services.

#### **14. Limitations and Exclusions of Liability**

- (A) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO ALL COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT YOU MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.
- (B) IN ADDITION, OUR MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT, OR ANY PRODUCT UNIT OR SERVICE, IS LIMITED TO 120% OF THE AMOUNT YOU PAID TO US FOR THE SPECIFIC PRODUCT PURCHASED THAT GAVE RISE TO THE LIABILITY.
- (C) THE PROVISIONS ABOVE IN THIS SECTION 14 DO NOT LIMIT OUR LIABILITY THAT CANNOT BE LIMITED BY LAW, INCLUDING BUT NOT LIMITED TO LIABILITY FOR FRAUD AND DEATH OR PERSONAL INJURY CAUSED BY OUR NEGLIGENCE.

#### **15. Export Restrictions**

15.1 Items. You acknowledge that each product and any related software and technology, including technical information we supply you, including those contained in product documents (collectively "Items"), is subject to U.S., EU and local government export controls.

15.2 Export Controls. The export controls may include, among others, those of the Export Administration Regulations of the U.S. Department of Commerce (the "EAR"), which may restrict or require licenses for the export of Items from the United States and their re-export from other countries.

15.3 Compliance Requirements. You must comply with the EAR, and all other applicable laws, regulations, treaties, and agreements relating to the export, re-export, and import of any Item. You must not, directly or indirectly, without first obtaining the required license to do so from the appropriate U.S. government agency; (a) export, re-export, distribute or supply any Item to (a) any restricted or embargoed country or to a person or entity whose privilege to participate in exports has been denied or restricted by the U.S. government; (b) any person or entity who is involved in improper development or use of nuclear weapons or of chemicals/biological weapons, or missiles, or in terrorist activities. You will, if we request, provide information on the end user and end use of any Item you export or plan to export.

15.4 Audit Cooperation. You will cooperate fully with us in any official or unofficial audit or inspection related to applicable export or import control laws or regulations, and will indemnify and hold us harmless from, or in connection with, your or your consultants', agents' or employees' violation of this Section 15.

#### **16. Miscellaneous**

16.1 No Assignment. You may not delegate any duties nor assign any rights or claims hereunder without our prior written consent, and any such attempted delegation or assignment will be void.

16.2 Governing Law. The Agreement and performance under it will be governed by the laws of (a) the state of Massachusetts, if you are located in the USA or Canada; or (b) the laws of the country where the selling entity (as specified

on your order confirmation from us) is located, if you are not located in the USA or Canada. In the event of any legal proceeding between you and us relating to the Agreement, neither party may claim the right to a trial by jury. Any action arising under the Agreement must be brought within one year from the date that the cause of action arose. The U.N. Convention on Contracts for the International Sale of Goods is hereby expressly excluded.

16.3 Regulatory Restrictions. In addition to the restrictions set out in Section 11 of these Terms: (a) you must use our products in accordance with our instructions; (b) you are solely responsible for making sure that the way you use our products complies with applicable laws, regulations and governmental policies; (c) you must obtain all necessary approvals and permissions you may need; and (d) it is solely your responsibility to make sure the products are suitable for your particular use.

16.4 Uncontrollable Circumstances. We will not be responsible or liable for failing to perform our obligations under the Agreement to the extent caused by circumstances beyond our reasonable control. In certain situations, we may use our reasonable judgment and apportion products then available for delivery fairly among our customers.

16.5 No Waiver; Invalidity. Our failure to exercise any rights under the Agreement is not a waiver of our rights to damages for your breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. No person other than you or us will have any rights under the Agreement.

16.6 Headings. Headings are for convenience only and shall not be used in the interpretation of these Terms.

16.7 Confidentiality. You agree to keep confidential any non-public technical information, commercial information (including prices, without limitation) or instructions (including any gene sequences, oligo types or sequences) received from us as a result of discussions, negotiations and other communications between us in relation to our products or services.

16.8 Notices. Any notice or communication required or permitted under these Terms must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address.

16.9 Requirement to Reduce to Writing. No waiver, consent, modification, amendment or changes to the terms of the Agreement will be binding unless in writing and signed by both of us. Our failure to object to terms contained in any subsequent communication from you will not be a waiver or modification of our Agreement.

16.10 Severability. Any provision of the Agreement which is prohibited or which is held to be void or unenforceable shall be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

*Updated May 24, 2021*

**Instrument Services Terms and Conditions**

These terms and conditions apply to instrument services purchased from Life Technologies Corporation (“we” “us” or “our”). If you purchase instrument services from other Thermo Fisher Scientific entities, different terms and conditions may apply. If you have any questions about our quotation, our ordering process, or what terms and conditions apply to your order, please call Customer Services at 1 800 955 6288.

As used in this document, “you” and “your” refer to our Instrument Services customer that appears on the Instrument Services quotation and/or any final Service Plan documents.

**1. Contract Terms.**

1.1 **General Terms.** These are the contract terms and conditions under which we sell, and/or provide, our Instrument Services to you (“Service Terms”), unless (i) we specifically designate other terms to apply to a specific service; or (ii) if you and we have entered into a valid, active, written agreement that expressly provides that its terms supersede and replace these Service Terms with respect to the services covered by the other agreement. Any additional or different terms and conditions that you may provide to us, are material alterations and we reject them. These Service Terms collectively with any quotation provided by us constitute the “Agreement.” Our offer to sell and/or perform Instrument Services is expressly limited to the terms of the Agreement. By ordering or requesting Instrument Services from us, you agree to accept and be bound by these Service Terms. The Agreement is the complete and exclusive contract between us with respect to your purchase of, or request for, Instrument Services.

1.2. **Terms Conflict.** If any conditions within the Agreement documents conflict with each other, we will give them the following order of precedence with the document listed first being given a higher order of priority: these Service Terms, the quotation, and, if you are buying a Service Plan, the service level description of the Service Plan.

1.3. **When Agreement takes Effect.** The Agreement between us is created when we accept your order or request, either by sending a written confirmation or by initiating performance of the Instrument Services.

**2. Service Offerings.**

2.1. **Service Offerings.** We offer repair, maintenance, relocation, recertification, training, qualification, and technical and application support services for your instruments and devices (collectively, “Instrument Services”).

2.2. **Manufacturer Warranty Services.** Some of our Instrument Services are provided as part of the limited instrument manufacturer warranty we offer you when you purchase our instrument.

2.3. **Service Plans.** We also provide post-manufacturer warranty maintenance and repair Instrument Services called “Service Plans”. Descriptions of our Service Plans are available at <http://www.thermofisher.com/instrumentervices>.

2.4. **Where we Perform Services.** We perform most Instrument Services in your lab, but we may perform some Instrument Services for smaller instruments at one of our facilities.

**3. Price.**

3.1. **Determining Price.** For Instrument Services you purchase, the price is shown in our quotation to you. If we do not provide you with a quotation, the price will be the list price that applies to your country on the date we receive your order.

3.2. **Taxes and Fees.** Our prices do not include any taxes (including VAT), duties, levies or other government fees that may apply to your order. If they apply, it will be your responsibility to pay them. If we pay them, we will add them to your invoice. If you claim any exemption, upon request you must provide a valid, signed certificate or letter of exemption for each respective jurisdiction.

**4. Payment Terms.**

4.1. **Payment Terms.** Unless we indicate another period on our quotation, you must pay invoices within 30 days from the invoice date in the currency specified in our invoice. Each order is a separate transaction, and you may not setoff payments from one order against another.

4.2. **Late Payment.** If you are late in making payment, without affecting our other rights, we may suspend performance or cancel your contract, reject your future orders, and charge you a late-payment charge, from the due date until paid, at the rate of 1% per month (12% per year) or, if less, the maximum amount allowed by law. You agree to pay this late charge upon request.

4.3. **Collection Costs.** If we appoint a collection agency or an attorney to recover any unpaid amounts, you must pay, to the extent permitted by applicable law, all reasonable costs of collection, including all associated reasonable attorneys’ fees.

## 5. Scheduling

- 5.1. Available Times. We provide Instrument Services Monday through Friday, 8:00 a.m. to 5:00 p.m. (local time), excluding holidays.
- 5.2. Scheduling. We will work with you to schedule Instrument Services at a time that is mutually convenient.

## 6. Decontamination and Safe Working Environment

- 6.1. Decontamination Obligations. Before we perform Instrument Services on your instrument, you will fully decontaminate your instrument or its component of radioactive, biological, toxic or other dangerous materials or substances or any material and, if we request, you will submit to us an accurate and completed certificate of decontamination.
- 6.2. Moving Instrument. If we reasonably request, you agree to move your instrument to another location that we reasonably deem is safe for our employees to perform Instrument Services.
- 6.3. Biosafety Level-3 and 4 Laboratories. We do not service instruments in biosafety level-3 laboratories, unless we agree otherwise in writing in advance. There may be an additional charge and additional terms for Instrument Services in such facilities. We do not service instruments in biosafety level-4 laboratories.

## 7. Spare Parts

- 7.1. Repair or Replace. We may repair or replace any parts of the instrument based on our reasonable professional judgment.
- 7.2. New, Used or Reconditioned Parts. We may use new, used, or reconditioned parts. All parts will have the same warranties as new parts. We may retain any replaced part as our property.

## 8. Service Plans

- 8.1. Service Level Descriptions. For service level descriptions of our Service Plans, please go to <http://www.thermofisher.com/instrumentservices>. The terms of Service Plans that apply to you are incorporated into these Service Terms.
- 8.2. Instrument Recertification. If your instrument has not been under our warranty or our Service Plan immediately prior to the time of your requested coverage, before we cover your instrument under a Service Plan, we may require instrument recertification. We will provide instrument recertification services on a time-and-materials basis. If applicable, the fees for any such recertification services will be estimated by us and approved by you in writing, in advance of our performance of recertification services.
- 8.3. No Coverage for Ancillary Equipment. Unless we stated otherwise in our quotation, our Service Plans cover only our instruments and do not include ancillary equipment even if we supplied it.
- 8.4. No Replacement of Consumables. Our Service Plans do not cover replacement of consumable products used on the instruments.
- 8.5. Exclusions. In addition to the above exclusions, our Service Plans do not cover replacement of parts or repairs needed for defects or damage resulting from (i) your neglect, carelessness, or misuse, for example, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause.
- 8.6. Terminating your Service Plan. Service Plans may be terminated in the following ways:
- (A) Terminating for Any Reason. You or we may cancel your Service Plan by sending a written notice of termination to the other at least 30 days before effective date of termination.
- (B) Terminating for Cause. We may immediately terminate a Service Plan if the instrument covered by the Service Plan is transferred to another location without our advance written consent, or we may adjust the cost of providing the Instrument Services at the new location provided you agree in writing to pay the new rate which may be higher.
- (C) Effects of Termination. If a Service Plan is terminated by you under Section 8.6(A) or by us under Section 8.6(B), we will charge you for the total price of services actually performed and expenses actually and reasonably incurred in servicing the covered instrument under the underlying Service Plan from its effective date until the effective termination date, or the prorated price of the underlying Service Plan from its effective date until the effective termination date, whichever is greater, plus 15% of the total fee

paid for the underlying Service Plan. We will credit you for any payment that you made to us in excess of this amount and you may use the credit toward future purchases from us of instruments, consumables or Service Plans. We do not provide cash refunds on account of the early cancellation of any Service Plan or other agreement for Instrument Services.

## **9. Limited Warranty for Instrument Services.**

9.1. **Limited Warranty.** We warrant that the Instrument Services we provide to you will be in accordance with the generally accepted standards prevailing in the Instrument Service industry. You must make any claim for breach of this warranty within 90 days of the date the Instrument Services were performed and prior to any unauthorized repair, change, or modification has been made to any part of the instrument.

9.2. **Exclusions.** Our warranties do not apply to (i) your neglect, carelessness, or misuse, such as but not limited to, connecting the instrument to electrical services or other utilities not in accordance with the installation requirements for the instrument, using incompatible solvents or samples with the instrument, operating the instrument not in conformance with our instructions or specifications, or your improper or inadequate maintenance of the instrument; (ii) installation of software or use in combination with software or products that we did not supply or authorize; (iii) modification, repair, service transfer to another location of the instrument that you or your employees, agents or an unauthorized contractor made; (iv) intrusive activity, including without limitation computer viruses, hackers or other unauthorized interactions with instrument or software that detrimentally affects normal operations; from acts of nature or accident; or (v) any defects or damage that we did not cause. ADDITIONALLY, ANY INSTALLATION, MAINTENANCE, REPAIR, SERVICE, RELOCATION OR ALTERATION TO OR OF, OR OTHER TAMPERING WITH, THE PRODUCTS PERFORMED BY ANY PERSON OR ENTITY OTHER THAN US WITHOUT OUR PRIOR WRITTEN APPROVAL, OR ANY USE OF REPLACEMENT PARTS WE HAVE NOT SUPPLIED, WILL IMMEDIATELY VOID AND CANCEL ALL WARRANTIES WITH RESPECT TO THESE INSTRUMENT SERVICES AND THE AFFECTED PRODUCTS.

9.3. **Remedies.** During the applicable warranty period only, for services not meeting our warranty, we agree, at our option to: (i) re-perform the defective Instrument Services, or (ii) refund to you the fee you paid to us for the defective Instrument Services, if applicable. This section states our entire liability for a valid warranty claim under the Agreement.

9.4. **Limitations.** OUR WARRANTIES EXTEND ONLY TO YOU, THE ORIGINAL PURCHASER, AND YOU CANNOT TRANSFER THEM. WITH RESPECT TO INSTRUMENT SERVICES, EXCEPT AS EXPRESSLY STATED, WE DISCLAIM ALL OTHER WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING BUT NOT LIMITED TO WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR MERCHANTABILITY.

## **10. Compliance with Laws, Codes, Rules and Regulations.**

10.1 We make no representation that the Instrument Services we provide to you will meet or satisfy standards of any governmental body, including the U.S. Food and Drug Administration. You agree that it is your responsibility to ensure that such services are adequate to meet your regulation or certification requirements and that all requirements of any governmental body or other organization, including, but not limited to, any requirement of the U.S. Food and Drug Administration are your responsibility.

10.2 In fulfilling obligations under the Agreement, we and you agree to comply, and to have our and your employees and subcontractors assigned to the Agreement and business relationship comply, with all applicable laws, codes, rules and regulations which may relate to our respective activities and responsibilities under the Agreement.

## **11. Indemnification.**

11.1. **Our General Indemnity.** We will indemnify and hold you harmless from and against any and all third-party claims for injury to persons, including death, or damage to tangible property occurring while our employees are on your premises to the extent the claims are caused by our employees' gross negligence, recklessness, and willful misconduct, provided we are given prompt notice of any claim and, to the extent permitted by applicable law, the opportunity to control the defense and settlement of the claim.

11.2. **Conditions to Our Indemnity.** As a condition to any of our indemnification obligations you must (a) notify us in writing, as soon as you become aware of any claim; (b) not admit any liability or take any other action in connection with the claim that could affect the defense; (c) to the extent permitted by applicable law, allow us to solely control the defense or settlement of the claim; and (d) give us your reasonable information, co-operation and assistance.

12. **Limitation of Liability.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE OR YOU WILL NOT BE LIABLE UNDER ANY LEGAL THEORY (INCLUDING BUT NOT LIMITED TO CONTRACT, NEGLIGENCE, STRICT LIABILITY IN TORT OR WARRANTY OF ANY KIND) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, MULTIPLE, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO COSTS OF COVER, LOST PROFITS, LOST DATA, LOSS OF BUSINESS, LOSS OF GOODWILL OR LOSS OF REVENUE) THAT WE OR YOU MIGHT INCUR UNDER THE AGREEMENT, OR THAT MAY ARISE FROM OR IN CONNECTION WITH OUR PRODUCTS OR SERVICES, EVEN IF WE OR YOU HAD NOTICE OF THE POSSIBILITY OF SUCH DAMAGES. WE WILL NOT BE LIABLE FOR ANY LOSS OR INJURY THAT IS THE RESULT OF INSTRUMENT, EQUIPMENT, OR PRODUCT ERROR OR THE FAILURE OF AN INSTRUMENT, EQUIPMENT, OR OTHER PRODUCT TO PERFORM IN ACCORDANCE WITH ITS SPECIFICATIONS. OUR TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THESE SERVICE TERMS, ANY SERVICE PLAN, OR INSTRUMENT SERVICES, INCLUDING WITHOUT



LIMITATION ANY SERVICES RENDERED THEREUNDER, OR BREACH THEREOF OR FAILURE TO PERFORM IN CONTRACT, TORT, WARRANTY, OR OTHERWISE, WILL NOT EXCEED THE AMOUNT OF FEES YOU PAID US FOR THE SPECIFIC SERVICE PLAN OR INSTRUMENT SERVICES THAT GIVE RISE TO YOUR CLAIM.

NOTWITHSTANDING THE FOREGOING, THE PROVISIONS ABOVE IN THIS SECTION 12 DO NOT LIMIT A PARTY'S LIABILITY FOR INDEMNIFICATION, BREACH OF CONFIDENTIALITY, FRAUD, OR THAT CANNOT BE LIMITED BY LAW.

**13. Miscellaneous.**

13.1. Assignment. You or we may not transfer or assign your Service Plan or any contract with us for Instrument Services without the prior written consent of the other, which consent will not be unreasonably withheld or delayed. Any attempted transfer or assignment in violation of this Section 13.1 will be void. Notwithstanding the foregoing and subject to Section 8.6(B) of these Service Terms, we or you may assign the Agreement without consent to an affiliate or to a purchaser of all or substantially all of our or your assets or in connection with a merger, acquisition, or consolidation, provided that we or you provide written notice to the other of such assignment within a reasonable time from the date of such assignment and further provided that the non-assigning party is not prohibited by law or regulation or business policies from conducting business with the entity to which this Agreement is assigned. Our and your rights, obligations and liabilities will inure to the benefit of and bind our and your successors and assigns.

13.2. Intellectual Property. Nothing in these Service Terms shall be deemed or construed as a license or grant of any intellectual property rights, whether express, implied, by estoppel, or otherwise, to you, or to limit our rights to enforce our patent or other intellectual property rights.

13.3. Governing Law. The Agreement and performance under it will be governed by the laws of the State of Delaware, USA, without regard to provision on the conflict of laws. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to the Agreement.

13.4. Uncontrollable Circumstances. We or you will not be responsible or liable for failing to perform our or your obligations (excluding your payment obligations) under the Agreement to the extent caused by circumstances beyond our or your reasonable control.

13.5. No Waiver; Invalidity. Our or your failure to exercise any rights under the Agreement is not a waiver of our or your rights to damages for breach of contract and is not a waiver of any subsequent breach. If any provision or part of the Agreement is found by any court of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability will not affect the other provisions of the Agreement. No person other than you or us will have any rights under the Agreement. Headings are for convenience only and shall not be used in the interpretation of these Service Terms.

13.6. Confidentiality. All non-public information that either party ("Receiving Party") receives or acquires from the other party ("Disclosing Party"), either in writing, orally, or through observation of operations, or in the course of fulfilling obligations under the Agreement that is marked as confidential, or if not so marked, which a reasonable person would identify as confidential given the nature of the information and the circumstances of its disclosure ("Confidential Information") shall be held by the Receiving Party in confidence at all times, employing reasonable means to protect the confidentiality of the Confidential Information and used solely as required to perform the obligations under the Agreement, and shall be returned or destroyed when no longer required, or upon request by the Disclosing Party. The Receiving Party shall ensure that all recipients of the said Confidential Information, including a Receiving Party's employees, agents, subcontractors and/or licensors, comply with the obligations under this section. For the avoidance of doubt, it is understood and agreed that our Confidential Information includes the terms of the Agreement and any non-public technical information, commercial information (including prices, without limitation), manuals or instructions received from us as a result of discussions, negotiations and other communications between you and us in relation to our products or Instrument Services, and your Confidential Information includes the terms of the Agreement and any non-public information about you, your business, operations, and research and development programs, or that is viewed or accessed either during the performance of this Agreement or as a result of discussions, negotiations or other communications between you and us. A Receiving Party will not disclose, or allow to be disclosed, the Confidential Information by any means to any third party without the prior written approval of the Disclosing Party.

The above obligations of confidentiality and non-disclosure do not apply to information that:

- (A) is or becomes publicly available other than through breach of these Service Terms;
- (B) is lawfully obtained by either party from a lawful third party without breach of these Service Terms by a party or its employees, agents, subcontractors or licensors;
- (C) was known to a party prior to disclosure to such party by a Disclosing Party as shown by documentation sufficient to establish such knowledge; or
- (D) is required by law to be disclosed by you or us.

13.7. Notices. Any notice or communication required or permitted under these Service Terms must be in writing and will be deemed received when personally delivered, or 3 business days after being sent by certified mail, postage prepaid, to a party's specified address.

13.8. Our Insurance. For the duration of the Agreement:

(A) We will pay for and maintain the following minimum limits of insurance coverage: (i) commercial general liability and products liability coverage with limits not less than \$1,000,000 per occurrence and \$2,000,000 aggregate, (ii) commercial automobile liability covering liability arising out of our operation of any vehicle (any automobile, including owned, non-owned and hired vehicles) with minimum limits of \$1,000,000 combined single limit each accident, (iii) umbrella liability coverage with limits not less than \$5,000,000 per occurrence and \$5,000,000 aggregate, and (iv) workers' compensation as may be required by the jurisdiction in which we are doing business and employers' liability insurance of \$1,000,000. Coverage may be provided on a claims-made rather than occurrence basis. If coverage is provided on a claims-made basis, coverage will be maintained for a period of three (3) years following termination of the Agreement with a retroactive date on or prior to the effective date of the Agreement.

(B) If agreed in writing that these Service Terms will govern, you will be included as an additional insured under the commercial general liability and umbrella liability policies for liability arising out of operations by us or on our behalf, but only to the extent required by written Agreement.

(C) Upon request, we will promptly furnish a certificate of insurance, and applicable endorsement, to you evidencing such coverages. To receive a certificate of insurance, you must provide your desired address for the certificate holder. Any applicable endorsement will be a blanket endorsement.

(D) We will provide a minimum of thirty (30) days advance written notice to you in the event of cancellation of our insurance policies in the event a gap in coverage would be reasonably expected to occur.

13.9. Changes to Terms. We reserve the right to change these Service Terms at any time. Any changes made will not apply to the Agreement between us for any order we receive before the changes are made. The most recent revision date can be found at the end of these Service Terms.

March 10, 2021

**City of San Diego**  
**CONTRACTOR STANDARDS**  
**Pledge of Compliance**

The City of San Diego has adopted a Contractor Standards Ordinance (CSO) codified in section 22.3004 of the San Diego Municipal Code (SDMC). The City of San Diego uses the criteria set forth in the CSO to determine whether a contractor (bidder or proposer) has the capacity to fully perform the contract requirements and the business integrity to justify the award of public funds. This completed Pledge of Compliance signed under penalty of perjury must be submitted with each bid and proposal. If an informal solicitation process is used, the bidder must submit this completed Pledge of Compliance to the City prior to execution of the contract. All responses must be typewritten or printed in ink. If an explanation is requested or additional space is required, Contractors must provide responses on Attachment A to the Pledge of Compliance and sign each page. Failure to submit a signed and completed Pledge of Compliance may render a bid or proposal non-responsive. In the case of an informal solicitation or cooperative procurement, the contract will not be awarded unless a signed and completed Pledge of Compliance is submitted. A submitted Pledge of Compliance is a public record and information contained within will be available for public review except to the extent that such information is exempt from disclosure pursuant to applicable law.

By signing and submitting this form, the contractor is certifying, to the best of their knowledge, that the contractor and any of its Principals have not within a five (5) year period – preceding this offer, been convicted of or had a civil judgement rendered against them for commission of a fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) contract or subcontract.

“Principal” means an officer, director, owner, partner or a person having primary management or supervisory responsibilities within the firm. The Contractor shall provide immediate written notice to the Procurement Contracting Officer handling the solicitation, at any time prior to award should they learn that this Representations and Certifications was inaccurate or incomplete.

**This form contains 10 pages, additional information may be submitted as part of *Attachment A*.**

**A. BID/PROPOSAL/SOLICITATION TITLE:**

Provision of Materials and Service Used for Quantitation and Forensic DNA Typing

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**B. BIDDER/PROPOSER INFORMATION:**

Life Technologies Corporation		N/A	
Legal Name		DBA	
5781 Van Allen Way	Carlsbad	CA	92008
Street Address	City	State	Zip
Alicia Cromien	760-268-8717	NA	
Contact Person, Title	Phone	Fax	

Provide the name, identity, and precise nature of the interest\* of all persons who are directly or indirectly involved\*\* in this proposed transaction (SDMC § 21.0103). Use additional pages if necessary.

\* The precise nature of the interest includes:

- the percentage ownership interest in a party to the transaction,
- the percentage ownership interest in any firm, corporation, or partnership that will receive funds from the transaction,
- the value of any financial interest in the transaction,
- any contingent interest in the transaction and the value of such interest should the contingency be satisfied, and
- any philanthropic, scientific, artistic, or property interest in the transaction.

\*\* Directly or indirectly involved means pursuing the transaction by:

- communicating or negotiating with City officers or employees,
- submitting or preparing applications, bids, proposals or other documents for purposes of contracting with the City, or
- directing or supervising the actions of persons engaged in the above activity.

Name	Gigi Chapman	Title/Position	Contracts Specialist
City and State of Residence	Carlsbad, California	Employer (if different than Bidder/Proposer)	Employee of Bidder/Proposer
Interest in the transaction	Acting solely as an employee of Bidder/Proposer tasked with contract terms and conditions with no financial interest in the transaction other than status of employee		

Name	Kelcey Kemp	Title/Position	Senior Account Manager, Human Identification
City and State of Residence	Murrieta, CA	Employer (if different than Bidder/Proposer)	employee of Bidder/Proposer
Interest in the transaction	Employee acting as a sales director to be compensated based on sales volume		

Name	Melissa LoStracco	Title/Position	NA Sales Director, Human Identification
City and State of Residence	MA	Employer (if different than Bidder/Proposer)	employee of Bidder/Proposer
Interest in the transaction	employee acting as a sales director to be compensated based on sales volume		

Name	Dan Rosenfeld	Title/Position	Senior Services Sales Representative
City and State of Residence	Encinitas, CA	Employer (if different than Bidder/Proposer)	employee of Bidder/Proposer
Interest in the transaction	employee acting as a sales representative to be compensated based on sales volume		

Name	Jennifer Bryce	Title/Position	Service Sales and Contracts Manager, West Coast
City and State of Residence	CA	Employer (if different than Bidder/Proposer)	employee of Bidder/Proposer
Interest in the transaction	employee acting as a sales manager to be compensated based on sales volume		

Name	Alicia Cromien	Title/Position	Sr. District manager
City and State of Residence	Carlsbad, ca	Employer (if different than Bidder/Proposer)	employee of Bidder/Proposer
Interest in the transaction	employee acting as a sales manager to be compensated based on sales volume		

Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	
Name	Title/Position
City and State of Residence	Employer (if different than Bidder/Proposer)
Interest in the transaction	

**C. OWNERSHIP AND NAME CHANGES:**

1. In the past five ~~ten~~ (5) years, has your firm changed its name?  
 Yes       No

If **Yes**, use Attachment A to list all prior legal and DBA names, addresses, and dates each firm name was used. Explain the specific reasons for each name change.

2. Is your firm a non-profit?  
 Yes       No

If **Yes**, attach proof of status to this submission.

3. In the past five (5) years, has a firm owner, partner, or officer operated a similar business?  
 Yes       No **Please see Attachment A**

If **Yes**, use Attachment A to list names and addresses of all businesses and the person who operated the business. Include information about a similar business only if an owner, partner, or officer of your firm holds or has held a similar position in another firm.

**D. BUSINESS ORGANIZATION/STRUCTURE:**

Indicate the organizational structure of your firm. Fill in only one section on this page. Use Attachment A if more space is required.

**Corporation** Date incorporated: May 21, 1997 State of incorporation: Delaware

List corporation's current officers: President: Vacant  
Vice Pres: Vacant, with no plans to fill.  
Secretary: Michael A. Boxer  
Treasurer: Anthony H. Smith

Type of corporation: C  Subchapter S

Is the corporation authorized to do business in California:  Yes       No

If **Yes**, after what date: June 2, 1997

Is your firm a publicly traded corporation?  Yes  No

If Yes, how and where is the stock traded? \_\_\_\_\_

If Yes, list the name, title and address of those who own ten percent (10 %) or more of the corporation's stocks:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

Do the President, Vice President, Secretary and/or Treasurer of your corporation have a third party interest or other financial interests in a business/enterprise that performs similar work, services or provides similar goods?  Yes  No

If Yes, please use Attachment A to disclose.

Officers of the corporation have financial interest in that they are employees of the parent company. In their roles as employees, they serve as directors and officers of many other subsidiaries of the parent. Those subsidiaries also do work in the scientific field.

Please list the following:

	Authorized	Issued	Outstanding
a. Number of voting shares:	<u>1000</u>	<u>105</u>	<u>105</u>
b. Number of nonvoting shares:	<u>0</u>	_____	_____
c. Number of shareholders:	_____	_____	<u>1</u>
d. Value per share of common stock:	_____	Par \$ <u>.01</u>	_____
		Book \$ <u>NA</u>	_____
		Market \$ <u>NA</u>	_____

**Limited Liability Company** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

List the name, title and address of members who own ten percent (10%) or more of the company:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Partnership** Date formed: \_\_\_\_\_ State of formation: \_\_\_\_\_

List names of all firm partners:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Sole Proprietorship** Date started: \_\_\_\_\_

List all firms you have been an owner, partner or officer with during the past five (5) years. Do not include ownership of stock in a publicly traded company:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**Joint Venture** Date formed: \_\_\_\_\_

List each firm in the joint venture and its percentage of ownership:

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**Note:** To be responsive, each member of a Joint Venture or Partnership must complete a separate *Contractor Standards form*.

**E. FINANCIAL RESOURCES AND RESPONSIBILITY:**

1. Is your firm preparing to be sold, in the process of being sold, or in negotiations to be sold?

Yes  No

If **Yes**, use Attachment A to explain the circumstances, including the buyer's name and principal contact information.

2. In the past five (5) years, has your firm been denied bonding?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances; include bonding company name.

3. In the past five (5) years, has a bonding company made any payments to satisfy claims made against a bond issued on your firm's behalf or a firm where you were the principal?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

4. In the past five (5) years, has any insurance carrier, for any form of insurance, refused to renew the insurance policy for your firm?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

5. Within the last five years, has your firm filed a voluntary petition in bankruptcy, been adjudicated bankrupt, or made a general assignment for the benefit of creditors?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

6. Are there any claims, liens or judgements that are outstanding against your firm?

Yes  No [Please see Attachment A](#)

If **Yes**, please use Attachment A to provide detailed information on the action.

7. Please provide the name of your principal financial institution for financial reference. By submitting a response to this Solicitation Contractor authorizes a release of credit information for verification of financial responsibility.

Name of Bank: Bank of America Merrill Lynch

Point of Contact: Anthony Marshall, AVP, Treasury Advisor

Address: 900 W. Trade Street, 2nd Floor, Charlotte, NC 28255

Phone Number: 888-715-1000 Ext. 66945

Additional Account Details Available Upon Request - Please Request As Needed

8. By submitting a response to a City solicitation, Contractor certifies that he or she has sufficient operating capital and/or financial reserves to properly fund the requirements identified in the solicitation. At City's request, Contractor will promptly provide to City

a copy of Contractor's most recent balance sheet and/or other necessary financial statements to substantiate financial ability to perform.

9. In order to do business in the City of San Diego, a current Business Tax Certificate is required. Business Tax Certificates are issued by the City Treasurer's Office. If you do not have one at the time of submission, one must be obtained prior to award.

Business Tax Certificate No.: B2020003493 Year Issued: 2022

**F. PERFORMANCE HISTORY:**

1. In the past five (5) years, has your firm been found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for defaulting or breaching a contract with a government agency?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

2. In the past five (5) years, has a public entity terminated your firm's contract for cause prior to contract completion?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances and provide principal contact information.

3. In the past five (5) years, has your firm entered into any settlement agreement for any lawsuit that alleged contract default, breach of contract, or fraud with or against a public entity?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

4. Is your firm currently involved in any lawsuit with a government agency in which it is alleged that your firm has defaulted on a contract, breached a contract, or committed fraud?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

5. In the past five (5) years, has your firm, or any firm with which any of your firm's owners, partners, or officers is or was associated, been debarred, disqualified, removed, or otherwise prevented from bidding on or completing any government or public agency contract for any reason?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances.

6. In the past five (5) years, has your firm received a notice to cure or a notice of default on a contract with any public agency?

Yes  No

If **Yes**, use Attachment A to explain specific circumstances and how the matter resolved.

7. Performance References:

Please provide a minimum of three (3) references familiar with work performed by your firm which was of a similar size and nature to the subject solicitation within the last five (5) years.

Please note that any references required as part of your bid/proposal submittal are in addition to those references required as part of this form.

Company Name: Washoe County Sheriff's Office Crime Laboratory



Contact Name and Phone Number: Laura Dickson (775-328-2860)

Contact Email: ldickson@washoecounty.gov

Address: 911 Parr Blvd, Reno NV 89512

Contract Date: Ongoing Provision of Scientific Products

Contract Amount: Life Technologies Corporation respectfully declines to provide its customers' Contract Amount or other confidential aspects of its customers' business relationships

Requirements of Contract: Requirements of Contract: Provision of Scientific Products

Company Name: Orange County Crime Laboratory

Contact Name and Phone Number: Stephanie Callian (714-834-6258)

Contact Email: skc@occl.ocgov.com

Address: 320 N Flower Street, Santa Ana, CA 92703

Contract Date: Ongoing Provision of Scientific Products

Contract Amount: Life Technologies Corporation respectfully declines to provide its customers' Contract Amount or other confidential aspects of its customers' business relationships

Requirements of Contract: Provision of Scientific Products

Company Name: Kern Regional Crime Laboratory

Contact Name and Phone Number: Mandi Van Buren (661-868-5671)

Contact Email: mvanburen@kernda.org

Address: 1300 18th Street, 4th Floor Bakersfield, CA 93301

Contract Date: Ongoing Provision of Scientific Products

Contract Amount: Life Technologies Corporation respectfully declines to provide its customers' Contract Amount or other confidential aspects of its customers' business relationships

Requirements of Contract: Requirements of Contract: Provision of Scientific Products

**G. COMPLIANCE:**

1. In the past five (5) years, has your firm or any firm owner, partner, officer, executive, or manager been criminally penalized or found civilly liable, either in a court of law or pursuant to the terms of a settlement agreement, for violating any federal, state, or local law in performance of a contract, including but not limited to, laws regarding health and safety, labor and employment, permitting, and licensing laws?  
 Yes  No

If Yes, use Attachment A to explain specific circumstances surrounding each instance. Include the name of the entity involved, the specific infraction(s) or violation(s), dates of instances, and outcome with current status.

2. In the past five (5) years, has your firm been determined to be non-responsible by a public entity?  
 Yes  No

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the name of the entity involved, the specific infraction, dates, and outcome.

**H. BUSINESS INTEGRITY:**

1. In the past five (5) years, has your firm been convicted of or found liable in a civil suit for making a false claim or material misrepresentation to a private or public entity?  
Yes No

If **Yes**, use Attachment A to explain specific circumstances of each instance. Include the entity involved, specific violation(s), dates, outcome and current status.

2. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a crime, including misdemeanors, or been found liable in a civil suit involving the bidding, awarding, or performance of a government contract?  
Yes No

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

3. In the past five (5) years, has your firm or any of its executives, management personnel, or owners been convicted of a federal, state, or local crime of fraud, theft, or any other act of dishonesty?  
Yes No

If **Yes**, use Attachment A to explain specific circumstances of each instance; include the entity involved, specific infraction(s), dates, outcome and current status.

4. Do any of the Principals of your firm have relatives that are either currently employed by the City or were employed by the City in the past five (5) years?  
Yes No

If **Yes**, please disclose the names of those relatives in Attachment A.

**I. BUSINESS REPRESENTATION:**

1. Are you a local business with a physical address within the County of San Diego?  
Yes No

2. Are you a certified Small and Local Business Enterprise certified by the City of San Diego?  
Yes No

Certification # \_\_\_\_\_

3. Are you certified as any of the following: **No, Life Technologies Corporation, is a large entity.**  
a. Disabled Veteran Business Enterprise Certification # \_\_\_\_\_  
b. Woman or Minority Owned Business Enterprise Certification # \_\_\_\_\_  
c. Disadvantaged Business Enterprise Certification # \_\_\_\_\_

**J. WAGE COMPLIANCE:**

In the past five (5) years, has your firm been required to pay back wages or penalties for failure to comply with the federal, state or local **prevailing, minimum, or living wage laws**? Yes No If **Yes**, use Attachment A to explain the specific circumstances of each instance. Include the entity involved, the specific infraction(s), dates, outcome, and current status.

By signing this Pledge of Compliance, your firm is certifying to the City that you will comply with the requirements of the Equal Pay Ordinance set forth in SDMC sections 22.4801 through 22.4809.

**K. STATEMENT OF SUBCONTRACTORS & SUPPLIERS:**

Please provide the names and information for all subcontractors and suppliers used in the performance of the proposed contract, and what portion of work will be assigned to each subcontractor. Subcontractors may not be substituted without the written consent of the City. Use Attachment A if additional pages are necessary. If no subcontractors or suppliers will be used, please write "Not Applicable."

**Not Applicable.**

**No subcontracting is contemplated as of the date of this Pledge or Compliance.**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

Sub-Contract Dollar Amount: \$ \_\_\_\_\_ (per year) \$ \_\_\_\_\_ (total contract term)

Scope of work subcontractor will perform: \_\_\_\_\_

Identify whether company is a subcontractor or supplier: \_\_\_\_\_

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Contractor License No.: \_\_\_\_\_ DIR Registration No.: \_\_\_\_\_

Sub-Contract Dollar Amount: \$ \_\_\_\_\_ (per year) \$ \_\_\_\_\_ (total contract term)

Scope of work subcontractor will perform: \_\_\_\_\_

Identify whether company is a subcontractor or supplier: \_\_\_\_\_

Certification type (check all that apply): DBE DVBE ELBE MBE SLBE WBE Not Certified

Contractor must provide valid proof of certification with the response to the bid or proposal to receive participation credit.

**L. STATEMENT OF AVAILABLE EQUIPMENT:**

A full inventoried list of all necessary equipment to complete the work specified may be a requirement of the bid/proposal submission.

By signing and submitting this form, the Contractor certifies that all required equipment included in this bid or proposal will be made available one week (7 days) before work shall commence. In instances where the required equipment is not owned by the Contractor, Contractor shall explain how the equipment will be made available before the commencement of work. The City of San

Diego reserves the right to reject any response, in its opinion, if the Contractor has not demonstrated he or she will be properly equipped to perform the work in an efficient, effective matter for the duration of the contract period.

**M. TYPE OF SUBMISSION:** This document is submitted as:

- Initial submission of *Contractor Standards Pledge of Compliance*
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Cooperative agreement
- Initial submission of *Contractor Standards Pledge of Compliance* as part of a Sole Source agreement
- Update of prior *Contractor Standards Pledge of Compliance* dated \_\_\_\_\_.

**Complete all questions and sign below.**

Under penalty of perjury under the laws of the State of California, I certify that I have read and understand the questions contained in this Pledge of Compliance, that I am responsible for completeness and accuracy of the responses contained herein, and that all information provided is true, full and complete to the best of my knowledge and belief. I agree to provide written notice to the Purchasing Agent within five (5) business days if, at any time, I learn that any portion of this Pledge of Compliance is inaccurate. Failure to timely provide the Purchasing Agent with written notice is grounds for Contract termination.

I, on behalf of the firm, further certify that I and my firm will comply with the following provisions of SDMC section 22.3004:

- (a) I and my firm will comply with all applicable local, State and Federal laws, including health and safety, labor and employment, and licensing laws that affect the employees, worksite or performance of the contract.
- (b) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of receiving notice that a government agency has begun an investigation of me or my firm that may result in a finding that I or my firm is or was not in compliance with laws stated in paragraph (a).
- (c) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of a finding by a government agency or court of competent jurisdiction of a violation by the Contractor of laws stated in paragraph (a).
- (d) I and my firm will notify the Purchasing Agent in writing within fifteen (15) calendar days of becoming aware of an investigation or finding by a government agency or court of competent jurisdiction of a violation by a subcontractor of laws stated in paragraph (a).
- (e) I and my firm will cooperate fully with the City during any investigation and to respond to a request for information within ten (10) working days.

**Failure to sign and submit this form with the bid/proposal shall make the bid/proposal non-responsive. In the case of an informal solicitation, the contract will not be awarded unless a signed and completed *Pledge of Compliance* is submitted.**

Lori Drapeau/Contracts Specialist		9/2/2022
Name and Title	Signature	Date

**City of San Diego  
CONTRACTOR STANDARDS  
Attachment "A"**

Provide additional information in space below. Use additional Attachment "A" pages as needed. Each page must be signed. Print in ink or type responses and indicate question being answered.

Continuation of Section C. OWNERSHIP AND NAME CHANGES

3. In the past five (5) years, has a firm owner, partner or officer operated a similar business?

Life Technologies Corporation is a subsidiary of Thermo Fisher Scientific Inc. (the 'Company'). The Company is parent to a worldwide group of subsidiaries listed in Exhibit 21 to the Company's 10-k filing, found at <https://www.sec.gov/Archives/edgar/data/97745/000009774519000007/tmo201810kex21.htm>.

Continuation of (i) Section E. FINANCIAL RESOURCES AND

RESPONSIBILITY. 6. Are there any claims, liens or judgements that are outstanding against your firm?

There have been no material adverse claims, liens or judgments involving Life Technologies Corporation, or any company Life Technologies Corporation holds a controlling interest in, or any company that holds an interest in Life Technologies Corporation, or any of the principal officers of Life Technologies Corporation in the past five years that have not been reported in public filings available with the SEC. As a publicly traded company, any relevant suits are listed in the public record. Additionally, to the best of Life Technologies Corporation's knowledge, there is no current or threatened litigation that would impact Life Technologies Corporation's ability to provide products and/or perform services under a contract with the City of San Diego.

-End of Attachment A-

I have read the matters and statements made in this Contractor Standards Pledge of Compliance and attachments thereto and I know the same to be true of my own knowledge, except as to those matters stated upon information or belief and as to such matters, I believe the same to be true. I certify under penalty of perjury that the foregoing is true and correct.

Lori Drapeau/Contracts Specialist

Print Name, Title



Signature

9/2/2022

Date

#54  
11/15/22

(O-2023-65)

ORDINANCE NUMBER O- 21568 (NEW SERIES)

DATE OF FINAL PASSAGE NOV 28 2022

AN ORDINANCE OF THE COUNCIL OF THE CITY OF  
SAN DIEGO AUTHORIZING EXECUTION OF AN  
AGREEMENT WITH LIFE TECHNOLOGIES CORPORATION  
FOR FORENSIC DNA TESTING MATERIALS AND POST-  
WARRANTY INSTRUMENT MAINTENANCE.

WHEREAS, performing DNA analysis on samples associated with police investigations plays a critical role in the investigation of crimes; and

WHEREAS, the San Diego Police Department (SDPD) Crime Laboratory receives over 2,000 requests of analysis and tests over 10,000 items for DNA per year; and

WHEREAS, in compliance with international requirements and national standards for DNA testing laboratories, the DNA testing process is thoroughly validated with documented operating and interpretation procedures to meet the rigorous requirements of the accrediting body; and

WHEREAS, SDPD Crime Laboratory's current methodologies in the DNA testing process were thoroughly validated and implemented in 2015, and in compliance with these requirements, the SDPD Crime Laboratory relies on the instrumentation, testing kits, and consumables obtained from Life Technologies Corporation; and

WHEREAS, Life Technologies Corporation's materials and post-warranty instrument maintenance is critical in ensuring that the SDPD Crime Laboratory meets the requirements to perform DNA analysis on evidence and reference samples associated with criminal investigations; and

WHEREAS, as provided for in Section 22.3016 of the San Diego Municipal Code, the City's Purchasing Agent certified in writing that the agreement is exempt from competitive

bidding, with Life Technologies Corporation as a sole source provider of the necessary goods and services; and

WHEREAS, the City now desires to enter into an agreement with Life Technologies Corporation to provide forensic DNA testing materials and post-warranty instrument maintenance for five years in an amount not-to-exceed \$2,795,000, under the terms and conditions set forth in the agreement; and

WHEREAS, under San Diego City Charter section 99, no contract, agreement, or obligation extending for a period of more than five years may be authorized except by ordinance approved by a two-thirds' majority vote of the Council; and

WHEREAS, the Office of the City Attorney has drafted this ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That the Mayor, or his designee, is authorized to execute, for and on behalf of the City, an agreement between the City of San Diego and Life Technologies Corporation, to provide forensic DNA testing materials and post-warranty maintenance for a term of five (5) years, for an amount not-to-exceed \$2,795,000, pursuant to the terms and conditions contained in the Agreement on file with the City Clerk as Document No. OO- 21568.

Section 2. That the Chief Financial Officer is authorized to appropriate and expend an amount not-to-exceed \$2,795,000 from the General Fund (100000), Police Department (1914) over the five-year term of the Agreement for forensic DNA testing materials and post-warranty maintenance, contingent upon the adoption of the of the Annual Appropriation Ordinance for the



applicable fiscal year, and contingent upon the Chief Financial Officer furnishing a certificate certifying that funds necessary for expenditure are, or will be, on deposit with the City Treasurer.

Section 3. That a full reading of this ordinance is dispensed with prior to passage, a written copy having been made available to the Council and the public prior to the day of its passage.

Section 4. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Jill S. Cristich  
Jill S. Cristich  
Deputy City Attorney

JSC:hm  
October 4, 2022  
Or.Dept: PSE  
Doc. No.: 3107372\_2

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of NOV 15 2022.

ELIZABETH S. MALAND  
City Clerk

By [Signature]  
Deputy City Clerk

Approved: 11/21/22  
(date)

[Signature]  
TODD GLORIA, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
TODD GLORIA, Mayor

(The date of final passage is November 28, 2022, which represents the day this ordinance was returned to the Office of the City Clerk with the Mayor's signature for approval.)

Passed by the Council of The City of San Diego on NOV 15 2022, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage NOV 28 2022

AUTHENTICATED BY: TODD GLORIA  
Mayor of The City of San Diego, California.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Kayeth Medina, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on NOV 01 2022, and on NOV 28 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal) ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Kayeth Medina, Deputy

Office of the City Clerk, San Diego, California  
21568  
Ordinance Number O-\_\_\_\_\_

Passed by the Council of The City of San Diego on November 15, 2022, by the following vote:

**YEAS:** LACAVA, CAMPBELL, WHITBURN, MONTGOMERY STEPPE, VON WILPERT, CATE, CAMPILLO, & ELO-RIVERA.

**NAYS:** NONE.

**NOT PRESENT:** MORENO.

**RECUSED:** NONE.

AUTHENTICATED BY:

**TODD GLORIA**

Mayor of The City of San Diego, California

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(Seal)

By: Krystell Medina, Deputy

I HEREBY CERTIFY that the above and foregoing is a full, true, and correct copy of ORDINANCE NO. O-21568 (New Series) of The City of San Diego, California.

I FURTHER CERTIFY that said ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on November 1, 2022, and on November 28, 2022.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

**ELIZABETH S. MALAND**

City Clerk of The City of San Diego, California

(SEAL)

By: Krystell Medina, Deputy