

BROKEN ARROW  **PUBLIC SCHOOLS**
Educating Today *Leading Tomorrow*

Contract Committee Review Request
 MUST BE COMPLETED IN FULL

Date: 10/23/2023

Contract/Agreement Vendor:

Name of Vendor & Contact Person

Vendor Email Address

Describe Contract (Technology, program, consultant-prof Development, etc.)

Please use Summary below to fully explain the contract purchase, any titles, and details for the Board of Education to review.

Reason/Audience to benefit

BOE Date

Amount of agreement

Person Submitting Contract/Agreement for Review:

PLEASE SEND THROUGH APPROPRIATE APPROVAL ROUTING BEFORE SENDING TO BOARD CLERK

Principal &/or Director or Administrator: 

Does this Contract/Agreement utilize technology? YES NO
 If yes, Technology Admin: _____

Cabinet Team Member:

Funding Source:
Fund/Project OCAS Coding

Consent

Action

Accept and approve the purchase agreement between e3 Diagnostics and Broken Arrow Public Schools. Purchase agreement is for a new audiometer machine to be used at Broken Arrow Freshman Academy. The cost to the District is \$1,340 to be paid from general fund. R.Kaiser

Summary This area must be complete with full explanation of contract

The Contract/Agreement should be received at least 2 weeks prior to a Board Meeting to ensure placement on the Agenda. The Contract Committee meets most Tuesdays at 8:00a.m. All Contracts/Agreements, regardless the amount, must be first approved by the Contract Committee and then presented to the Board of Education for approval and signature. The item will be placed on Electronic School Board for the board agenda by Janet Brown. By following this process, the liability of entering into an agreement is placed with the district rather than an individual.

Quote

Billing Address

Broken Arrow Public School
 412 S. 9th
 BROKEN ARROW, OK 74012

Account Number: OK1283
 Contact: Todd Brannon
 +1 4052024351
 toab@e3diagnostics.com

Corrina Baldwin

Quote number: Q-353833-1
 Date: 9/29/2023
 Quote expires on: 11/29/2023
 External Reference No:
 Shipping Method: FOB

Shipping Address

Broken Arrow Public Schools
 412 S. 9th St.
 Broken Arrow, OK 74012

Payment Terms: NET 30 DAYS FROM INVOICE DATE

Product Number	Product	Quantity	Price per unit	Total
8107370 MAI-8107370	Maico MA 27 Portable Pure Tone Audiometer (DD45) - Tests: Pure Tone audiometry 125-8000 Hz. Transducers: DD45 headphones. Features: continuous, pulsed, warble tones; AC power; -10-100 dB HL; built in handle. Accessories: audiogram pad.	1.00	1,300.00	1,300.00
8004643 MAI-8004643	Carrying case MA 27/ MA 28	1.00	99.00	0.00
8122326 SERVICE	Shipping	1.00	40.00	40.00

Total: USD 1,340.00

Tax not included

PURCHASE AGREEMENT

The Customer (identified above) agrees to buy and e3 Diagnostics (e3 Diagnostics, Fein no. 36-2852863 ("Vendor")) agrees to sell the equipment and supplies ("Equipment") listed above. The purchase of the Equipment is subject to the Terms and Conditions described herein. The following "Terms and Conditions" page(s) are an integral part of this Agreement, and the sales of all Equipment, whether sold by Vendor as a distributor or as a manufacturer representative. Acceptance of this Quote/ Agreement may preclude, at the option of the invoicing party, use of a credit card as a form of payment.

Quote #: Q-353833-1

Accepted By (Buyer)

Date: _____

Accepted By (Sales Person)

Todd Brannon

Date: 9/29/2023

GENERAL TERMS & CONDITIONS

These Terms and Conditions, (collectively with the applicable purchase order or quote, the "Agreement"), dated as of is entered into by and between e3 Diagnostics, Inc., an Illinois corporation, with principal offices located at 3333 N. Kennicott Avenue, Arlington Heights, IL 60004 ("Vendor") and Customer (You).

EQUIPMENT: Vendor will provide Customer with one (1) copy of any applicable operator's manual. Service manuals or additional operator manuals shall not be provided without additional charge unless specifically stated.

Customer understands and acknowledges that all equipment sold in connection with this Agreement ("Equipment") is manufactured by third parties and is sold by Vendor acting as either a distributor or a manufacturer representative. Customer further acknowledges and agrees that this Agreement is not binding upon Vendor until approved by the Manager of Vendor's Central Office or another authorized officer of Vendor, or, with respect to Equipment for which Vendor acts as a manufacturer representative, an authorized officer of the manufacturer.

PAYMENT: Payment terms are net thirty (30) days from the date of invoice. Amounts payable to Vendor are payable in full without setoff or deduction, for applicable taxes or otherwise. Customer shall be solely responsible for any taxes determined to be due and owed to any federal, state, local, or regional taxing authority arising from the sale of any equipment under this Agreement. Customer shall pay one and one-half percent (1 ½%) per month service charge on any amounts not paid when due.

Customer may not cancel or refuse delivery of any order for custom-made Equipment, sound room, SLM's, computers, or special order items. For cancellation or refusal to accept an order for other types of instrumentation (e.g. Audiometer, Immittance, OAE, ENG, ABR, H.A. Analyzer units), Customer must pay a service charge equal to twenty percent (20%) of the total price for the canceled or refused items. In addition, Customer is additionally responsible for all charges associated with such cancellation or refusal including, but not limited to, removal, insurance, and shipping.

WARRANTIES: Manufacturer Warranties: Vendor makes no representations or warranties, express or implied, concerning the Equipment. Vendor shall provide for Customer to receive any and all manufacturer's warranties in connection with the Equipment and all rights to make claim for breach of warranty that are or may be available with respect to the Equipment, to the extent allowed by the manufacturer. The provisions of any manufacturer's agreement with Vendor setting out the manufacturer's warranty and service responsibilities together with all limitations thereon and exclusions therefrom are incorporated into and made a part of this Agreement. **Within ninety (90) days of delivery for clinical instrumentation, Vendor will provide, in addition to the manufacturer's warranty, free warranty services on-site without additional charge to Customer. After such ninety (90) day period, Customer must pay Vendor's standard warranty services and travel rates for such on-site warranty services. No Other Warranties:** No representation or other affirmation of fact, including but not limited to statements regarding capacity, suitability for use, or performance of any Equipment, shall be or be deemed to be a warranty or representation by Vendor for any purpose, nor give rise to any liability or obligation of Vendor whatsoever. Vendor makes no express or implied warranties of any kind, including those of merchantability and fitness for a particular purpose, and expressly disclaims the same.

DELIVERY/INSTALLATION: Customer will pay all installation, set-up, insurance, and shipping charges (FCA (Incoterms

® 2020), place of manufacture), and such charges are not included in the purchase price unless specifically stated. Delivery dates are approximate, and any delivery schedule is estimated only and presented in good faith by Vendor. Vendor will not assume any liability, consequential or otherwise, for any delay or failure to deliver all or any part of the Equipment. Customer shall be responsible for all necessary site preparations prior to and during the installation of the Equipment in accordance with Vendor and/or applicable manufacturer instructions. Such site preparations may include, but are not limited to, provision of electric power, HAVC requirements, accessibility to site, and the provision of sufficient flooring for the Equipment. Customer shall bear any costs or penalties incurred by Vendor as a result of Customer's failure to provide adequate facilities and site preparations for installation at time of delivery as per Vendor or manufacturer instructions or as a result of Customer's failure to accept delivery of the Equipment.

TITLE AND SECURITY INTEREST: The title and the risk of loss shall pass from Vendor to Customer at the time of Vendor's shipment of equipment. Customer hereby grants to Vendor a security interest in the Equipment to secure any portion of the Purchase Price. A copy of this Agreement may be filed on behalf of Vendor with appropriate state authorities at any time after signature by Customer as a financing statement in order to protect Vendor's security interest in the Equipment. Until such time as the Purchase Price and all other charges specified herein are paid in full, Customer shall: (a) maintain the Equipment in good operating condition; (b) keep the Equipment free from liens and encumbrances; (c) not permit use of the Equipment in any manner likely to be injurious to the Equipment; (d) not remove or permit removal of the Equipment from its original location, or make or permit any alterations without the prior consent of Vendor; (e) keep Vendor advised of the location of the Equipment and permit Vendor to inspect the Equipment at all reasonable times; and (f) procure

and maintain fire, extended coverage, vandalism, and malicious mischief insurance to the full insurable value of the Equipment, with loss payable to Vendor and Customer as their interests shall appear.

BATTLE OF THE FORMS:

Customer may submit a purchase order to Vendor, but Customer explicitly acknowledges that any purchase order is for the administrative convenience of Customer only

VENDOR HEREBY OBJECTS TO AND REJECTS ANY AND ALL DIFFERENT OR ADDITIONAL TERMS OR CONDITIONS CONTAINED IN ANY ORDER SUBMITTED TO VENDOR BY OR ON BEHALF OF CUSTOMER.

INTELLECTUAL PROPERTY: "Intellectual Property Rights" means all industrial and other intellectual property rights comprising or relating to (i) patents; (ii) trademarks; (iii) copyrights; (iv) works of authorship, expressions, designs, design registrations, internet domain names, software, firmware, application programming interfaces, schematics, data, data files, databases, and other documentation, whether or not copyrightable or otherwise registrable, and whether or not registered; (v) trade secrets; and (vi) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of any of these rights under the laws of any jurisdiction. Customer acknowledges and agrees that: (a) any and all Vendor's Intellectual Property Rights are the sole and exclusive property of Vendor or its licensors; (b) Customer shall not acquire any ownership interest in any of Vendor's Intellectual Property Rights under this Agreement; (c) any goodwill derived from Customer's use of Vendor's Intellectual Property Rights inures to the benefit of Vendor or its licensors, as the case may be; (d) if Customer acquires any Intellectual Property Rights in or relating to any Goods by operation of law, such rights are hereby irrevocably assigned to Vendor or its licensors without further action by either of the Parties; and (e) Customer shall use Vendor's Intellectual Property Rights only in accordance with this Agreement and the instructions of Vendor. Customer shall not: (a) take any action that interferes or infringes in any way with any of Vendor's rights in or to Vendor's Intellectual Property Rights; (b) challenge Vendor's right, title, or interest in or to Vendor's Intellectual Property Rights; (c) make any claim or take any action adverse to Vendor's ownership of Vendor's Intellectual Property Rights; (d) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Goods, Services, or any Vendor's Intellectual Property Rights; or (e) alter, obscure, or remove any Vendor's Trademarks, copyright notices, or any other proprietary rights notices placed on the Goods or other materials supplied by Vendor.

LEGAL FEES AND WAIVER: In the event of any legal action brought by Vendor for breach of this Agreement, Vendor shall be entitled to reimbursement by Customer of all costs, expenses, and legal fees incurred in obtaining a remedy to the Customer's breach, including any appeal. Failure of Vendor to enforce the breach of any portion of this Agreement by Customer shall not constitute a waiver of such right in respect to the same or any other breach.

INDEMNIFICATION:

Each party (in such capacity, the "Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its officers, directors, employees, agents, affiliates, successors, and permitted assigns (each, an "Indemnified Party") against any and all losses, damages, liabilities, claims, judgments, or settlements, including reasonable attorney's fees and the costs of enforcing any right to indemnification under this Agreement, incurred by Indemnified Party (collectively, "Losses"), arising out of or resulting from any claim of a third party arising out of or occurring in connection with the Indemnifying Party's gross negligence, fraud, willful misconduct, or material breach of this Agreement. Customer shall indemnify, defend, and hold harmless Vendor and its officers, directors, employees, agents, affiliates, successors, and permitted assigns against any and all Losses arising out of or occurring in connection with Customer's misuse, modification, tampering, off-label use, or alteration of the equipment. The above indemnification obligations are conditioned on the Indemnified Party (i) promptly notifying the Indemnifying Party in writing of such action or claim, (ii) giving the Indemnifying Party sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at the Indemnifying Party's request and expense, assisting in such defense or settlement, provided that the Indemnifying Party shall not enter into any settlement which adversely affects any rights or interest of the Indemnified Party without the Indemnified Party's prior written consent.

CONFIDENTIALITY:

"Confidential Information" means all non-public, confidential, or proprietary information disclosed by either party, which is related, directly or indirectly, to the applicable purchase order that is either (i) marked or otherwise identified as confidential when disclosed or, if given orally, is confirmed in writing as being Confidential Information within thirty (30) days; or (ii) that a reasonable person would understand to be confidential or proprietary due to the context of its disclosure and/or its scope, content, or nature. Neither Party shall have any obligation with respect to the Confidential Information, or any part thereof, which: (i) was already in the receiving party's possession prior to receipt from the disclosing party, as evidenced by the receiving party's written records, without any obligation to keep it confidential; (ii) is disclosed to the receiving party by a third party having a legal right to make such disclosure; (iii) is or becomes part of the public domain other than through breach of these Terms & Conditions; (iv) is developed independently of Confidential Information received from disclosing party; or (v) is disclosed pursuant to a subpoena, order, government request, law, regulation, or other legal proceeding, provided, however, that prior to any such disclosure receiving party shall first provide the disclosing party with (a) prompt written notice of such requirement so that the disclosing party may seek a protective order or other remedy; and (b) reasonable assistance in opposing

e3 Headquarters
3333 N Kennicott Ave.
Arlington Heights IL 60004
United States

e3 Diagnostics

Oklahoma
United States
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such disclosure or seeking a protective order or other limitations on disclosure, at the disclosing party's expense. The parties each agree to protect the Confidential Information disclosed by the other party with the same degree of care used to protect its own Confidential Information from unauthorized use or disclosure, but in no event less than commercially reasonable care.

LIMITATIONS OF LIABILITY:

VENDOR SHALL NOT BE LIABLE TO CUSTOMER FOR ANY LIABILITY, LOSS, OR DAMAGE CAUSED, OR ALLEGED TO BE CAUSED, DIRECTLY OR INDIRECTLY, INCIDENTALLY OR CONSEQUENTIALLY, BY ANY EQUIPMENT, BY AN INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN. NOTHING IN THIS AGREEMENT OR OTHERWISE SHALL BE CONSTRUED TO IMPOSE LIABILITY ON VENDOR FOR ACTS OR OMISSIONS OF ANY MANUFACTURER. VENDOR SHALL NOT BE LIABLE FOR ANY DAMAGES CAUSED BY DELAY IN SHIPMENT, INSTALLATION, OR FURNISHING OF EQUIPMENT OR SERVICES UNDER THIS AGREEMENT. IN NO EVENT AND UNDER NO LEGAL THEORY (TORT, CONTRACT, OR OTHERWISE), SHALL (A) VENDOR BE LIABLE FOR LOSS OF PROFITS, INDIRECT, SPECIAL, CONSEQUENTIAL, OR OTHER SIMILAR DAMAGES ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR USE OF THE EQUIPMENT, (B) THE LIABILITY OF VENDOR EXCEED THE AMOUNTS PAID TO VENDOR BY CUSTOMER HEREUNDER, OR (C) ANY CAUSE OF ACTION BE BROUGHT BY CUSTOMER MORE THAN ONE (1) YEAR AFTER SUCH CAUSE OF ACTION HAS ACCRUED.

CHOICE OF LAW: These Terms and the relationship between the parties, including any claim or dispute that might arise between the parties, whether sounding in contract, tort, or otherwise, will be governed by the laws of the State of New Jersey without regard to its conflict of law provisions. In no event will the parties bring claims against one another under the laws of another jurisdiction.

VENUE AND FORUM: If for any reason a Dispute proceeds to court, all such Disputes (regardless of theory) arising out of, or relating to, these Terms & Conditions, or the relationship between you and Vendor, will be brought exclusively in the courts located in the county of Somerset, New Jersey, or the United States District Court, District of New Jersey. For the purposes of this Agreement, "Dispute" shall mean any disagreement regarding the terms outlined in this Agreement, in addition to any party's claims of material breach related to the obligations set forth within any of this Agreement's provisions. If a Dispute gives rise to a legal proceeding, You and Vendor agree to submit to the personal jurisdiction of the courts located within the county of Somerset, New Jersey, or District of New Jersey, and You and Vendor agree to waive any and all objections to the exercise of jurisdiction over the parties by such courts and to venue in such courts.

NOTICE: All notices under this Agreement ("Notice") must be in writing and addressed to the other party at its address set forth in the applicable purchase order. All Notices must be delivered by email (with confirmation of transmission), or either personal delivery or nationally recognized overnight courier (with all fees pre-paid), with a duplicate copy sent by email. Notice is effective only (a) upon receipt by the receiving Party; and (b) if the Party giving the Notice has complied with the requirements of this section.

CONFLICT OF TERMS: In the event of any irreconcilable conflict, discrepancy, or inconsistency among the provisions of these Terms and Conditions and a purchase order or quote, these Terms and Conditions shall govern.

COMPLIANCE WITH LAW: Both parties are in compliance with and shall comply with all applicable laws and regulations. Each party represents that it has and shall maintain in effect all the licenses necessary to carry out its obligations under the purchase order and these Terms and Conditions, if any.

GENERAL: Should any provision of these Terms and Conditions be declared or determined by any court to be illegal or invalid, the validity of the remaining parts, terms, or provisions shall not be affected thereby and any illegal or invalid part, term, or provision shall be deemed not to be a part of this Agreement. All titles and captions contained in this Agreement are for the convenience of reference only and shall not be used in the interpretation or construction of this Agreement. Neither this Agreement, nor any interest herein, shall be assigned by Customer without the express written consent of Vendor. This Agreement may be modified or amended only in a written agreement signed by each party hereto specifically stating that they have agreed to amend this Agreement.

COMPLETE AGREEMENT: These Terms and Conditions along with the applicable purchase order or quote constitute the entire Agreement between you and Vendor. All prior arrangements, understandings, or communications, whether orally or in writing, or otherwise, are superseded by these Terms and Conditions.

ADDITIONAL TERMS & CONDITIONS FOR SOUND ROOM PURCHASES AND INSTALLATION

In addition to the General Terms and Conditions outlined above, Customer accepts the following terms and conditions as governing any purchase and installation of Sound Rooms:

DELIVERY:

e3 Headquarters
3333 N Kennicott Ave.
Arlington Heights IL 60004
United States

e3 Diagnostics
Oklahoma
United States
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A tentative install date will be set at the time the order is placed with the manufacturer. Every effort will be made to meet the agreed upon delivery date. However, actual delivery date and time will be dependent upon the common carrier trucking company selected by the factory. The Customer shall notify the Vendor of any known delay at least four (4) weeks PRIOR to the scheduled installation date

INSTALLATION: The installation must be completed during Vendor's normal business hours, Monday through Friday, unless otherwise agreed upon by the parties in writing. Additional installation charges will be incurred by Customer if the installation crew is on-site and the installation site is not ready for installation.

STORAGE: If the site is not ready for the Sound Room installation on the agreed upon delivery date and the Sound Room is ready to be shipped or has been shipped, the Customer will be responsible for any additional storage charges from the manufacturer or shipping and/or storage charges from the common carrier trucking company arising from the delay.

SITE PREPARATION: Vendor is not responsible for removal of the ceiling, ceiling panels, soffit, or trim above or around the Sound Room for installation or removal. **Vendor must be notified before coming on-site if asbestos is present in any form.** The Customer is responsible to ensure the site has a minimum Sound Room clearance of four (4) inches on the sides and rear, one (1) inch beyond the ventilation panels, and the floor is able to support the published weight. Customer must establish and make easily accessible an area outside of the building, as close as possible to the installation site or service elevator, for the delivery truck or trailer during the installation period. Prior placing the order with manufacturer, Vendor must be notified if a receiving dock is not available at the installation site. If a lift gate truck is needed, there may be an additional charge.

ELEVATOR: If the Sound Room is NOT going to be installed and located on the ground floor at the installation site, the Customer is responsible for ascertaining suitability of the elevator and supplying to Vendor the dimensions of the elevator which will be used for transporting the Sound Room panels. Elevator dimensions and suitability for transporting panels is required before the order can be placed with the manufacturer. If the elevator is not adequate to accommodate standard Sound Room panels, the Customer is responsible for any charges for special transporting (i.e. hand carry upstairs, crane charges for window access, etc.) and/or manufacturing costs to modify the Sound Room panels to fit on the installation site's elevator. Customer shall ensure that Vendor has priority access to the service elevator during the installation period to prevent installation delays and additional charges.

RECESSED PIT: It is the sole responsibility of the Customer or their concrete contractor ("Contractor") to ensure the Sound Room pit size, pit depth, pit edge, and pit finish meets the manufacturer's "Pit Specifications." Delays in the installation of the Sound Room due to non-conforming Pit Specifications will be subject to additional charges.

ELECTRICAL, FIRE, AND SPRINKLER CONNECTIONS: Due to varying local standards, Vendor will not be responsible for meeting local building code (or UL) requirements or installing fire, electrical components, or sprinkler systems. The Customer is responsible for any hard wiring or plumbing required in the installation or removal of the Sound Room beyond plugging into a standard wall outlet. To meet local requirements, it is suggested that the Customer contact a local approved and licensed electrician or plumber prior to the installation date. For safety, a twenty (20) amp single-phase circuit with separate wire ground (Hospital Grade) is recommended.

HVAC CONNECTIONS: The typical Sound Room is not hooked up to the building HVAC system. Vendor is not responsible for hooking up or disconnecting HVAC connections to the building. If HVAC connections are utilized, the Customer is responsible for the purchase and professional installation of required special duct silencers and the flexible drop connection of the Sound Room.

PACKING AND CRATING MATERIALS: Vendor is not responsible for the removal of packaging/crating materials other than to a designated on-site location that must be provided by Customer.

SCRATCHES AND PAINTING: Every effort will be made to not incur paint scratches in the finish of the Sound Room. However, due to the nature of Sound Rooms, some scratches are inevitable. Vendor is not responsible for painting Sound Rooms or touch-up painting of scratches (due to color matching) that may occur during a normal installation. It is recommended the Customer consider professional electrostatically painting their rooms to match their office decor.

RELOCATING EXISTING SOUND ROOMS: In the disassembly of an existing Sound Room, damage or dents may normally occur to Sound Room panels and joiners while breaking the caulk sealing these parts together. New parts may unexpectedly be required and will be subject to additional charges to the Customer.

Customer is responsible for their architect, contractor or project manager contacting Vendor to discuss and coordinate the project.