

**State of Maine
Waiver of Competitive Bidding Request Form**

Form Instructions: Please provide the requested information in the white boxes below. This form is to precede all contract requests that are not the direct result of a competitive bid process.

Requesting Department's Contract Administrator:	Mark Alley, Laboratory Testing Engineer	Office/Division/Program of Contract Administrator:	Materials Testing & Exploration, Project Development
Est. Contract Amount:	\$ 8,417.00	Contract or RQS Number:	RQS2019091000000000125
Proposed Start Date:	10/1/2019	Proposed End Date:	10/1/2020
Vendor/Provider Name, City, State:		Anton Paar USA, Inc. (VS0000021687) 10215 Timber Ridge Drive Ashland, VA 23005	
Short Description of Good or Service:		Service Agreement for Dynamic Shear Rheometer laboratory testing equipment to include preventive maintenance and calibration.	
Please note, for transparency purposes, Waivers of Competitive Bidding will be publicly posted. Public postings are placed on the Division of Procurement Services website for a period of seven consecutive calendar days.		<p style="text-align: center;">To be completed by the Division of Procurement Services</p> Posting dates on Division of Procurement Services website: From: <u>09/13/2019</u> To: <u>09/19/2019</u>	
Notice of Intent to Waive Competitive Bidding Number:		NOI# 0920191519	
1. Statutory Justification State of Maine statute (5 M.R.S. §1825-B(2)) allows waivers of competitive bidding only for the specific reasons listed below. Please mark the appropriate box (X) next to the justification which applies to this specific request.			
	A. The procurement of goods or services by the State for county commissioners pursuant to Title 30-A, section 124, involves the expenditure of \$2,500 or less, and the interests of the State would best be served;		
	B. The Director of the Bureau of General Services is authorized by the Governor, or the Governor's designee, to make purchases without competitive bidding because, in the opinion of the Governor or the Governor's designee, an emergency exists that requires the immediate procurement of goods or services;		
<i>If citing the above justification for this Waiver of Competitive Bidding request, please have the requesting Department's Commissioner or Chief Executive (as the Governor's "designee") sign and date on the right.</i>		<i>By signing below, I signify as the Governor's designee there is an emergency that necessitates this non-competitive procurement.</i>	
		Signature:	
		Printed Name:	Date:

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	C.	After reasonable investigation by the Director of the Bureau of General Services, it appears that any required unit or item of supply, or brand of that unit or item, is procurable by the State from only one source;
	D.	It appears to be in the best interest of the State to negotiate for the procurement of petroleum products;
	E.	The purchase is part of a cooperative project between the State and the University of Maine System, the Maine Community College System, the Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State involving: (1) An activity assisting a state agency and enhancing the ability of the university system, community college system, Maine Maritime Academy, or a private, nonprofit, regionally accredited institution of higher education with a main campus in this State to fulfill its mission of teaching, research, and public service; (2) A sharing of project responsibilities and, when appropriate, costs;
		<i>If citing the above justification for this sole source request, please note that the specific approval of the Governor's Office is required, in accordance with Executive Order 26 FY 11/12, "An Order to Enhance Competitive Bidding". The approval must be documented on DAFS/BGS/Division of Procurement Services "GOVCOOP" form, found here: http://www.maine.gov/purchases/info/forms/govcoop.doc.</i>
	F.	The procurement of goods or services involves expenditures of \$10,000 or less, in which case the Director of the Bureau of General Services may accept oral proposals or bids;
X	G.	The procurement of goods or services involves expenditures of \$10,000 or less, and procurement from a single source is the most economical, effective and appropriate means of fulfilling a demonstrated need.
		If a different authorization specifically allows for this non-competitive procurement, please provide that reference here:

Please note that the following four points below (#2 through 5) all require a response.

2. Description of Specific Need

Please identify, and fully describe, the specific problem, requirement, or need the resulting non-competitive contract would address and which makes the goods or services necessary. Explain how the requesting Department determined that the goods or services are critical and/or essential to agency responsibilities or operations.

The MaineDOT Central Laboratory's Dynamic Shear Rheometers (DSRs) are critical pieces of laboratory testing equipment used to verify PG Asphalt Binder (PGAB) materials used in highway construction. PGAB is a major component of asphalt pavement in which the MaineDOT invests many millions of dollars each year. To ensure accuracy of results and to maintain required laboratory accreditation, it is necessary for this equipment to be properly maintained and calibrated.

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3. Availability of other Public Resources

Please explain how the requesting Department concluded that sufficient staffing, resources, or expertise is not available within the State of Maine's government, or other governmental entities (local, other state, or federal agencies) external to the requesting Department, which would be able to address the identified need more efficiently and effectively than the identified vendor.

Calibration and maintenance of a DSR requires specialized instrumentation and expertise which is not possessed by any agency or personnel in the public sector.

4. Cost

Since a waiver of competitive bidding is being requested for this procurement, please explain how the requesting Department concluded the negotiated costs, fees, or rates are **fair and reasonable**.

The cost of this service agreement is comparable to the cost of agreements we have had with other vendors for similar laboratory testing equipment.

5. Future Competition

Please describe potential opportunities which may be available to foster competition for these goods or services in the future.

The MaineDOT laboratory works with a variety of vendors for equipment calibration services and has changed working relationships as required based upon performance, customer service and cost. Because this DSR is such a specialized piece of equipment the vendors available to perform service and calibration of it are extremely limited and not much can be done on our part to foster competition. An effort was made to obtain a reduced cost service agreement through our master agreement with REMI (as we did for our other DSR), but they were not able to support this equipment.

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Please note that only one of the two points below (“Uniqueness” or “Timeframe”) requires a response. Requesting Departments are not required to respond to both points.

6. Uniqueness

Please explain if the goods or services required are unique to a specific vendor. Describe the unique qualifications, abilities, and/or expertise of the vendor and how those particular unique factors address the specific need identified above. If the vendor has unique equipment, facilities, or proprietary data, also explain the necessity of these particular unique assets.

Although there is at least one other vendor that offers generic calibration services for DSRs, there are a number of factors that require this work to be performed by Anton Paar USA, the manufacturer of this DSR: 1) No other vendor would be capable or qualified to make actual repairs or significant adjustments to the instrument—they would only be able to verify that the instrument is operating within tolerances; 2) this DSR is operated by proprietary software which another vendor likely will not be able to modify; 3) having another vendor service our DSR would very likely lead to contention between them and the manufacturer (and frustration and delay for us) should there be any operational issues.

7. Timeframe (Complete only if B. is the Statutory Justification marked on Page 1)

Please explain if time is of the essence and an emergency exists which requires the immediate procurement of goods or services. Describe the nature of this emergency, provide the date by which the goods or services must be delivered, and explain how that date was determined and its significance (i.e. impact if delayed beyond this date). Also, provide information as to how it was determined this vendor is the best option to address this time-sensitive procurement.

**Signature of requesting Department’s
Commissioner or Chief Executive
(or designee within the
Commissioner’s Office):**

*By signing below, I signify that my Department requests,
and I approve of, this Waiver of Competitive Bidding.*



Printed Name:

Bruce A. Van Noto

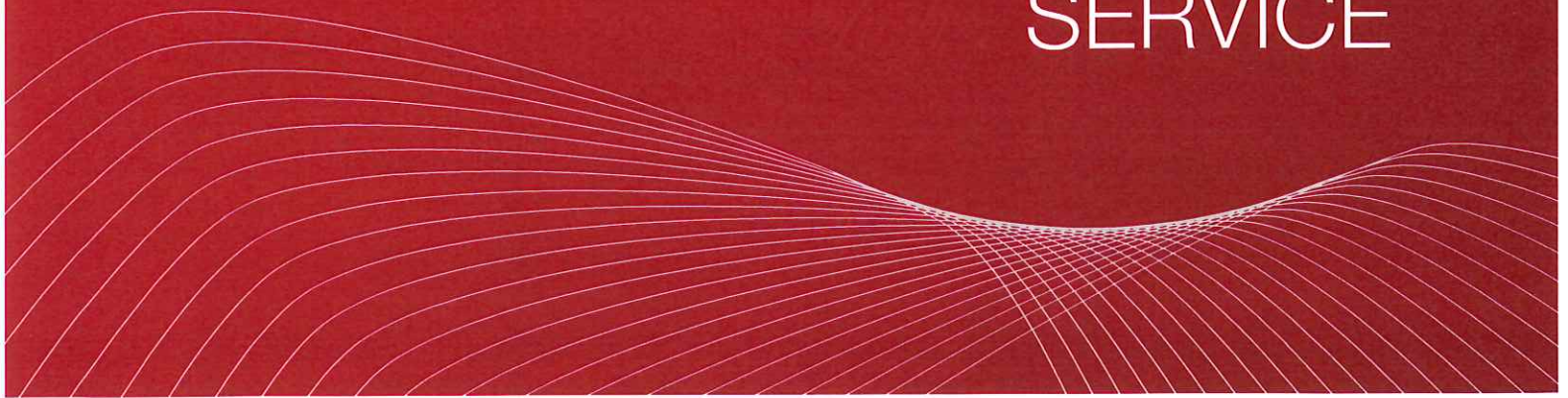
Date:

9/10/19



Anton Paar

AASHTO
ASTM
SERVICE





AASHTO/ASTM SERVICE BASIC¹

Introduction to Compliance for your SmartPave Rheometer.

AASHTO/ASTM method compliant standardization with Anton Paar certified preventative maintenance service once per year.

- ▶ Air-bearing performance check (Aircheck).
- ▶ Test plate inspection: dimensional analysis, alignment and performance (Inertia/Motor Adjustment).²
- ▶ 16 point temperature calibration, 4° C - 88° C.³
- ▶ Cannon® Certified Viscosity Reference Standard N2700000SP check.⁴
- ▶ Anton Paar certified PM service.
- ▶ Records for quality system.

- ▶ Cannon® Certified Viscosity Reference Standard N2700000SP check.⁴
- ▶ Anton Paar certified PM service.⁵
- ▶ Records for quality system.

AASHTO/ASTM SERVICE

The Key to Compliance for your SmartPave Rheometer.

The same level of professional service as the AASHTO/ASTM service package without the GMH 3710 portable thermometer calibration.

- ▶ Air-bearing performance check (Aircheck).
- ▶ Test plate inspection: dimensional analysis, alignment and performance (Inertia/Motor Adjustment).²
- ▶ 16 point temperature calibration, 4° C — 88° C.³

AASHTO/ASTM SERVICE + GMH

The Total Solution for your SmartPave Rheometer.

Twice-a-year visit for AASHTO/ASTM method compliant standardization with annual Anton Paar certified preventative maintenance service with the added benefit of worry free GMH 3710 portable thermometer calibration.

- ▶ Air-bearing performance check (Aircheck).
- ▶ Test plate inspection: dimensional analysis, alignment and performance (Inertia/Motor Adjustment).²
- ▶ 16 point temperature calibration, 4° C - 88° C.³
- ▶ Cannon® Certified Viscosity Reference Standard N2700000SP check.⁴
- ▶ Twice-a-year calibration of GMH 3710 portable thermometer.
- ▶ Anton Paar certified PM service.⁵
- ▶ Records for quality system.

¹ Basic covers elements listed in the service approximately one year after purchase. The 6 month compliant standardization is the responsibility of the customer in toto.

² AASHTO 6.1.1, Note 1, Figure 1, 9.1, 9.2 / ASTM 7.1.1, Note 1, 9.2

³ AASHTO 6.1.2.2., 9.1, 9.4.3 / ASTM 7.1.3, 9.4.3

⁴ AASHTO 9.1, 9.5.1.1, Note 15 / ASTM 9.1, 9.5.1.1, Note 13

⁵ Performed annually

SmartPave Calibration/PM Timeline

Installation

Install SmartPave:

Typical rheometer install with extra elements for AASHTO/ASTM. All baseline measurements:

- ▶ Temperature
- ▶ Torque check (VIS standard)
- ▶ Settings
- ▶ Records

1st AASHTO/ASTM 6 month

AASHTO/ASTM 6 month:

Method of test mandated standardization (calibration) on the SmartPave.

Covers:

- ▶ Temperature
- ▶ Torque check (VIS standard)
- ▶ Critical dimensions (MS/insets)
- ▶ Concentricity (MS/insets)
- ▶ Perpendicularity (MS/insets)
- ▶ Records

2nd AASHTO/ASTM 6 month

AASHTO/ASTM 6 month:

A one year PM is added to the 6 month mandated standardization.



Anton Paar Certified Service

MAINTENANCE CONTRACT

Contract No.: 2000064213

Contract Period: 10/01/2019 to 10/01/2020

The following conditions are agreed between the following parties:

Maine Department of Transportation

219 Hogan Rd

Technical Services

Bangor ME 04401-5603

United States of America

(in the contract named as CUSTOMER)

and

Anton Paar USA Inc.

10215 Timber Ridge Drive

Ashland VA 23005

USA

(in the contract named as ANTON PAAR).



1. Equipment and price of contract

The following products are part of this maintenance contract (prices do not include TAX, if applicable):

Pos.	Material No. / Cust. Tariff No. / Origin Description	Qty / Unit Price per unit	Currency	Value
000100	P00397 / AT CONTRACT "STANDARD" (N) Discount Position net	1 EA 7,946.00 -5.00	USD %	 7,548.70
	Equipment			
	Mat. No.:	Mat. description:	Serial number:	
	92008	SMARTPAVE 102 MODULAR COMPACT RHEOMETER	82257828	
	162177	TEMPERATURE MEASURING SET SMARTPAVE FACTORY CALIBRATED	23278646	
000200	P00395 / AT CONTRACT "STANDARD PLUS" (1) Discount Position net	1 EA 457.00 -5.00	USD %	 434.15
	Equipment			
	Mat. No.:	Mat. description:	Serial number:	
	16095	H-PTD120 HOOD WITH PELTIER HEATING/COOLING	82251895	
000300	P00395 / AT CONTRACT "STANDARD PLUS" (1) Discount Position net	1 EA 457.00 -5.00	USD %	 434.15
	Equipment			
	Mat. No.:	Mat. description:	Serial number:	
	16091	P-PTD200/56/I PELTIER TEMPERATURE CONTROL DEVICE	82246068	
Total net			USD	8,417.00



Total CIP Bangor

USD

8,417.00



Prices do not include TAX, if applicable

2. Effective Period

The Service Agreement ("Agreement") between the Customer and Anton Paar (the "Company") associated with these terms and conditions.

- a. All preventive maintenance agreements are event based and are valid until the Company has performed the service event(s) associated with the attached Service agreement.
- b. All repair contracts are valid for one 1 year from the start date unless otherwise indicated and agreed to in writing by both parties.

3. Scope of services

The Company will provide service as indicated on and for the specific instrument listed on each line of the agreement. The specific coverage for each agreement and contract type is indicated below:

a. Preventative Maintenance (Standard)

- i. **Preventive Maintenance** - This agreement provides for 1 (or more per contract) on site visit to be scheduled in advance in order for the Company to perform preventive service and parts replacement on the instrument(s) covered under the agreement.
- ii. **Repairs** - Additional services, beyond preventative maintenance, will be billed at prevailing time and materials rates.
- iii. **Telephone Assistance** - Available between 8:30 am and 5:00 pm EST, Monday through Friday, excluding all declared Federal, State and Company holidays. After hours phone support is available on a limited basis. This service will include, wherever practical, the diagnosis and correction of equipment malfunction(s) by telephone, modem, or internet.
- iv. **Rental Equipment** - In the event that the Customer experiences the need to send instrument(s) in for repair, rental equipment provided, where available, for a nominal fee.

b. StandardPlus Contract

- i. **Preventive Maintenance** - This agreement provides for 1 (or more per contract) on site visit to be scheduled in advance in order for the Company to perform preventive service and parts replacement on the instrument(s) covered under the agreement.
- ii. **Repairs** - The Company will provide all labor, return shipping, and repair parts, excluding glass components, for covered instrument as detailed in the quote. All repairs under this agreement are to be made at the Company's repair facility in Ashland Virginia.
- iii. **Telephone Assistance** - Available between 8:30 am and 5:00 pm EST, Monday through Friday, excluding all declared Federal, State and Company holidays. After hours phone support is available on a limited basis. This service will include, wherever practical, the diagnosis and correction of equipment malfunction(s) by telephone, modem, or internet.



- iv. **Rental Equipment** - In the event that the Customer experiences the need to send one of the covered instruments in for repair, the Company agrees to provide rental equipment at a 50% discount to standard rental rates. The Company must receive the rental equipment from the Customer no later than 10 days after the Customer's instrument(s) associated with the rental event have been shipped back to the Customer. If the rental equipment is not received within 10 days of Customer instruments being shipped, additional charges may apply. Regardless of rental agreement, a purchase order or credit card is required to secure a rental unit.

- c. **All Inclusive Contract**
 - i. **Preventive Maintenance** - This agreement provides for 1 (or more per contract) on site visit to be scheduled in advance in order for the Company to perform preventive service and parts replacement on the instrument(s) covered under the agreement.
 - ii. **Repairs** - The Company will provide all labor, travel and repair parts, excluding glass, for covered instruments as detailed in the associated quote. All repairs under this agreement are to be made on site at the Customer's location, unless requested otherwise.
 - iii. **Telephone Assistance** - Available between 8:30 am and 5:00 pm EST, Monday through Friday, excluding all declared Federal, State and Company holidays. After hours phone support is available on a limited basis. This service will include, wherever practical, the diagnosis and correction of equipment malfunction(s) by telephone, modem, or internet.
 - iv. **Rental Equipment** - In the event that the Customer experiences the need to send one of the covered instruments in for repair, the Company agrees to provide rental equipment at no charge, pending availability. The Company must receive the rental equipment from the Customer no later than 10 days after the Customer's instrument(s) associated with the rental event have been shipped back to the Customer. If the rental equipment is not received within 10 days of Customer instruments being shipped, charges may apply. Regardless of rental agreement, a purchase order or credit card is required to secure a rental unit.

- d. **Condition of Equipment** - Any instrument to be covered under this service contract, which is not currently covered by warranty or an existing service contract, may be subject to the following requirements prior to full coverage commencing at the companies discretion:
 - i. Test data may be requested that indicates the instrument is in full working order.
 - ii. An Anton Paar certified service engineer may inspect the operation of the equipment on site and deem it fully functional.

- e. **Additional Equipment** - In the event that additional equipment not currently listed in the quote is identified at the time of preventive maintenance or repair activity, the equipment identified will be added to the coverage of this contract only with the consent of both parties and will be invoiced to the Customer at current rates.

- f. **Access to Equipment** - Customer will provide free and safe access to the equipment (including the provision of the appropriate services such as electrical power, water, compressed air, liquid nitrogen, etc).

- g. **Exclusions** - This service contract does not provide repairs for problems arising from lack of proper care as recommended by Anton Paar.

4. Terms of validity

- a. All preventive maintenance agreements are event based and are valid until the Company has performed the service event(s) associated with the attached Service agreement.



- b. All repair contracts are valid for one 1 year from the start date unless otherwise indicated and agreed to in writing by both parties.

5. Invoicing and Cancellation Terms

- a. **Preventative Maintenance (Standard):** Preventive maintenance agreements will be invoiced following the first maintenance performed as part of this agreement.
- b. **StandardPlus and All Inclusive Contracts:** Contracts will be invoiced in full at the commencement of coverage.
- c. Payment terms are: Within 30 days due net
- d. **Cancellation** - Either party may cancel this Agreement at any time upon 60 days notice. Customer cancellation shall not be deemed received until written notice of cancellation is received at Company's office of record in Ashland, Virginia. Company's notice of cancellation shall be deemed received upon confirmation of postal delivery at the Customer's address of record contained in the contract. For Preventive Maintenance agreements, no refund of charges will be made. For StandardPlus and All Inclusive contracts, a pro-rated refund may be issued dependent upon the value of services which had been delivered.

6. Liability and Indemnification

- a. **Limitation of Liability** - Company's liability to Customer for damages, from any cause whatsoever shall be limited to actual damages up to a maximum of the annual service charge for the specific equipment under this contract that caused the damages or that are the subject matter of or are directly related to the cause of action.

IN NO EVENT SHALL THE COMPANY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT.

- b. **Fire, Flood, & Acts of God** - Company will not be responsible for failure to render maintenance service or supply replacement parts due to strikes, fire, flood, power outages or Acts of God, and other causes beyond its control.
- c. **Entire Agreement; Modification; Waiver** - This writing is intended by the parties as a final expression of their agreement and as a complete and exclusive statement of the terms thereof. This Agreement with attachments supersedes all prior representations, understandings or agreements of the parties and the parties rely only upon the contents of this Agreement in executing it. This Agreement can only be modified by a writing signed by the parties or their duly authorized agent. No waiver of a breach of any term or condition of this Agreement shall be construed to be a waiver of any succeeding breach.



- d. **Indemnification** - The Customer agrees to indemnify Company and its service employees or representatives for loss or injury resulting from the Customer's acts or omissions during the service person's time at the Customer's facilities. IN THE EVENT ANY PERSON, NOT A PARTY TO THIS AGREEMENT, SHALL MAKE ANY CLAIM OR FILE ANY LAWSUIT AGAINST THE COMPANY FOR ANY REASON RELATING TO THE COMPANY'S DUTIES AND OBLIGATIONS PURSUANT TO THIS AGREEMENT, THE CUSTOMER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS THE COMPANY FROM ANY AND ALL CLAIMS AND LAWSUITS, WHETHER THESE CLAIMS ARE BASED UPON ALLEGED RECKLESSNESS, ACTIVE OR PASSIVE NEGLIGENCE, EXPRESS OR IMPLIED CONTRACT OR WARRANTY, CONTRIBUTION OR INDEMNIFICATION OR STRICT OR PRODUCT LIABILITY ON THE PART OF THE COMPANY, ITS AGENTS, SERVANTS, ASSIGNEES, OR EMPLOYEES.
- e. **Governing Law; Jurisdiction** - This contract is governed exclusively by, and construed exclusively in accordance with the laws of the Commonwealth of Virginia. Customer irrevocably agrees to the exclusive jurisdiction of the state or federal courts of such state in any and all proceedings between the parties hereto, and Customer irrevocably agrees to service of process via certified mail, return receipt requested, to Customer at the address set forth herein. However, nothing stated herein shall in any manner prevent or preclude the Company from bringing any one or more actions against Customer in any jurisdiction in the United States in which Customer conducts business.

7. Warranties

- a. **Disclaimer of Warranties** - The Company and the Customer mutually agree that neither has made any representations or warranties, neither expressed or implied with regards to this Agreement, nor have either relied on any representations or warranties. IT IS SPECIFICALLY UNDERSTOOD THAT THE COMPANY DISCLAIMS THE IMPLIED WARRANTY OF MERCHANTABILITY AND ANY IMPLIED WARRANTIES OF FITNESS FOR ANY PARTICULAR PURPOSE. THE COMPANY AND CUSTOMER UNDERSTAND THAT THE COMPANY MAKES NO WARRANTIES OTHER THAN THOSE EXPRESSED IN WRITING BY THE COMPANY AND THAT NO REPRESENTATIVE OF THE COMPANY HAS ANY AUTHORITY TO MAKE ANY ADDITIONAL EXPRESS WARRANTIES OR OTHERWISE VARY THE TERMS OF THIS AGREEMENT.

8. Special Agreements



Quote expires 12/31/19

AASHTO/ASTM Service + GMH Calibrations - Semi-Annual visits

> PM scheduling lead time (visit 1 of 2) December 2019

> PM (visit 2 of 2) June 2020

> Peltier devices are 'checked' during the course of the PM for the main Rheometer (PM service is not available to the Peltier devices)

> First visit (compliance visit at ~6 month mark): Method of test mandated standardization (calibration) that provides for:

- Temperature
- Torque check (VIS standard)
- Critical dimensions (MS/insets)
- Concentricity (MS/insets)
- Perpendicularity (MS/insets)
- Maintenance records for quality system

> Second visit (at ~1 year mark): All of the above plus full Preventive Maintenance activity with AASHTO/ASTM Calibration:

- Air-bearing performance check (Aircheck)
- Test plate inspection: dimensional analysis, alignment and performance (Inertia/Motor Adjustment)
- 16 point temperature calibration, 4° C - 88° C
- Cannon® Certified Viscosity Reference Standard N2700000SP check
- Anton Paar certified PM service
- Firmware Upgrades (to Rheometer) performed if/when update needed
- Software Upgrade (to computer) not included
- Customer's computer not included (ex: Virus issues, software issues)

GMH (digital thermometer) Calibration:

> recommended that this device should be sent in to the Anton Paar Service center in Virginia PRIOR to each visit to ensure above service activities can be performed using your device.

> this calibration service will be initiated by Anton Paar USA via RMA process

>> An invoice for the entire amount of the service agreement will be generated after visit 1 of 2 has occurred



9. Signatures

ANTON PAAR

CUSTOMER:

Robson Naveto
Director of Service

Function:

Reinhard Eberl
General Manager

10. Contact information

Please fill in all necessary data for invoicing and technical support, if this differs from the standard data

Invoice address:

Company* _____
Department* _____
Address* _____
Post code* and City* _____
VAT Number _____
Purchase Order No. _____

*) if different from the company details mentioned on page 1.

Technical information: Contact for planning the execution of the maintenance:

Mr. / Mrs. _____