

September 23, 2013

Acct # 1030244000

Contract # 103024400013239

San Mateo County
ATTN: Bruce Fujikawa
Laboratory
225 West 37th Avenue
San Mateo, CA 94403

To: Mr. Fujikawa

Listed below are the pricing and terms for Gen-Probe's Aptima and AccuProbe family of products (individually or collectively, "Reagents").

| Product Number | Product Description | Price/Kit | Monthly Purchase Quantity | Extended Monthly Price |
|----------------|---|-------------|---------------------------|------------------------|
| 302923 | APTIMA COMBO 2, 100-TEST KIT, PANTHER | \$ 1,175.00 | 8.5 | \$ 9,987.50 |
| 301041 | Kit, APTIMA COMBO 2 Swab Spec Coll | \$ 62.50 | 7.5 | \$ 468.75 |
| 303085 | Advanced Cleaning Solution | \$ - | 2.4 | \$ - |
| CL0041 | Caps, AMP/P.R.S.(CL0045)DIAG. | \$ - | 0.7 | \$ - |
| 501604 | Spare Caps, PP, 60mL, TCR APTIMA 2x50 | \$ - | 0.4 | \$ - |
| 303096 | Run Kit, Panther | \$ - | 0.3 | \$ - |
| 102800 | Kit, AccuProbe RGTS 200-TESTS | \$ 75.00 | 0.8 | \$ 60.00 |
| 102845 | Kit, AccuProbe, AVIUM COMPLEX | \$ 266.00 | 0.8 | \$ 212.80 |
| 102850 | Kit, AccuProbe, M. GORDONAE | \$ 266.00 | 0.8 | \$ 212.80 |
| 102855 | Kit, AccuProbe, M. KANSASII | \$ 266.00 | 0.8 | \$ 212.80 |
| 102860 | Kit, AccuProbe, M. TUBERCULOSIS | \$ 266.00 | 1.1 | \$ 292.60 |
| 901190 | 12 mm, White Press Seal Caps, Ancillary | \$ 10.00 | 0.5 | \$ 5.00 |
| 201791 | Kit, Detection Rgt | \$ 27.00 | 0.6 | \$ 16.20 |
| 301078 | Kit, SYSCHECK, IVD, CDRH | \$ - | 1.0 | \$ - |
| 102065 | Tube, PS, 12 X 75 MM, 120/BX | \$ - | 0.3 | \$ - |
| 303536 | Kit, ATV-V2, 100T | \$ 600.00 | As Needed | \$ - |
| | | | | TOTAL: \$ 11,468.45 |

Instrumentation/equipment required will include the following:

| Quantity & Instrumentation | Description |
|----------------------------|--|
| 1 x 303095 | Panther Instrument System, DX |
| 1 x 800147 | Standard Service |
| | PRO360° Remote Diagnostics Management * |
| 1 x 800142 | In-House Training for two (2) System Operators |
| 1 X 1032001 | INST, LDR 4501 |

Term of Agreement: 5 Years

PAYMENT AND SHIPPING TERMS

| | |
|---------------|--|
| Payment Terms | See payment terms below |
| Freight Terms | FCA Origin :Prepaid and Add |
| Delivery | 7 Business days After Receipt of Order |

Firm Pricing for the term of the Agreement

Upon acceptance of this Agreement, Gen-Probe will reimburse Vendor for the expenses associated with the procurement of an LIS interface for the System, up to \$9,750.00 upon submission of an invoice from LIS Vendor.

*Gen-Probe will initially guarantee 24 hour service response time (Mon-Fri) for the PANTHER® System. Within six months of PANTHER® installation, Gen-Probe will continue the 24 hrs response time guarantee if PRO360° has been installed within San Mateo County and connected to Gen-Probe. If
10210 Genetic Center Drive, San Diego, CA 92121

PRO360⁰ has not been installed, Gen-Probe will extend the guaranteed service response time to 48 hrs.

1 **PAYMENT TERMS.** Customer shall make all payments due under this Agreement via check or Automated Clearing House (ACH) payments, net thirty (30) days from the date of invoice. Any other form of payment, including payments by individual credit cards, will be subject to approval and may result in administrative fees or surcharges.

2 **Unauthorized Use.** Customer agrees to use the Equipment solely in conjunction with Reagents or other supplies expressly authorized by Gen-Probe.

3 **Title.** Gen-Probe shall hold exclusive title to the Equipment and may assign, transfer, pledge or sell Gen-Probe's interest in the Equipment without notice to or approval from Customer. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. Customer shall not remove any markings from the Equipment, which identify Gen-Probe as the owner. Customer shall keep the Equipment free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the Equipment. Customer does hereby make, constitute and appoint Gen-Probe as Customer's true and lawful Attorney-in-Fact for the sole purpose of executing and filing, in the name of Customer, a UCC-1 statement in favor of Gen-Probe covering the Equipment.

4 **TAXES.** Fees and other charges described in this Agreement do not include federal, state or local sales, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits, or a valid tax-exempt certificates must be provided to Gen-Probe prior to the execution of this Agreement. If Gen-Probe is required to pay Taxes (except taxes on Gen-Probe's income), Gen-Probe shall invoice Customer for such Taxes, including interest and penalties.

5 **Warranty and Service.** Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests as described in the Package Inserts. The extent of Gen-Probe's liability under this warranty is limited to replacing any defective Reagent. Gen-Probe does not manufacture the System. The System is warranted through manufacturers as described in the Operator's Manual provided to Customer and such warranties extend to Gen-Probe's customers. Gen-Probe may, at its option, repair or replace any defective System. The foregoing warranty shall not apply in the event that: (a) Customer has not used and maintained the System in accordance with the guidelines set forth in the Operator's Manual provided to Customer; (b) if Customer has used the System with reagents and supplies not expressly authorized by Gen-Probe; (c) if the System is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written approval; or (d) if the System has been subject to misuse, negligence, or accident.

THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT.

6 **Maintenance and Repair.** Customer agrees to maintain the Equipment in good operating condition and assumes all risks of loss and damage to the Equipment, except as covered in Warranty and Service, above. In the event of loss or damage, Customer will pay Gen-Probe the depreciated price of the lost or damaged item of Equipment.

7 **Limitation of Liability.** EXCEPT FOR PAYMENTS DUE PURSUANT TO PAYMENT AND SHIPPING TERMS (ABOVE), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF THE EQUIPMENT OR REAGENTS BY CUSTOMER OR ANY OTHER PERSON UTILIZING EQUIPMENT NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR EQUIPMENT. Such limitation is intended to apply without regard to whether such damages are claimed, asserted or brought in an action or claim sounding in tort or contract, or on the warranty, or under any other law or form of action.

8 **Default.** The occurrence of any of the following events shall constitute a default ("Default") by Customer: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; (b) Customer's failure to perform any covenant or condition of this Agreement; (c) Customer becomes insolvent or unable to pay debts as they mature; (d) Customer files for protection under any bankruptcy or similar laws or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Customer or its property; (e) Customer makes an assignment for the benefit of its creditors; or (f) if any substantial attachment or execution be levied on any of Customer's property. In the event of a Default hereunder, all indebtedness of Customer hereunder may, at the option of Gen-Probe and without demand or notice of any kind, be declared, and thereupon immediately become, due and payable, and in addition to all other remedies, all of which are cumulative, Gen-Probe may (i) require Customer to return the Equipment and make the Equipment available to Gen-Probe at a place designated by Gen-Probe, and/or (ii) immediately terminate this Agreement.

Gen-Probe shall be entitled to recover from Customer any and all expenses and damages which Gen-Probe sustains by reason of said Default including but not limited to reasonable attorneys' fees and all expenses of repossession, removal, storing, and disposition of the Equipment. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice Gen-Probe as to that right or remedy or as to any other rights or remedies provided by applicable law.

9 **CONFIDENTIALITY.** Customer acknowledges the existence of the trademarks, copyrights, patents, and other intellectual property rights relating to the use or subsisting in or in connection with the System including software, hardware, and other parts thereof in which Gen-Probe or a third party has an interest are, and shall remain, the sole property of Gen-Probe or the respective third party. Customer shall not at any time dispute Gen-Probe's ownership thereof. Customer shall hold in confidence all materials or information disclosed to it by Gen-Probe hereunder ("Confidential Information"). In addition to the foregoing, Gen-Probe Confidential Information includes the operator's manual, the System price and payment terms. Customer agrees to take precautions to prevent the unauthorized disclosure or use of Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care.

The obligations of Customer hereunder shall not apply to materials or information which (a) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (b) is known by Customer at the time of receiving such information as evidenced by its records; (c) is hereafter furnished to Customer by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by Customer without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by Gen-Probe. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body or is otherwise required by law; provided, however, that Customer shall first have given notice to Gen-Probe and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information; (ii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.

- 10 Attachment 1, "Non-Discrimination and Other Requirements" attached hereto is made part of this Agreement. Any additional terms or conditions accompanying subsequent Customer Purchase Order or other documentation must be agreed upon, in writing, and signed by both parties in order to be valid.

Should you have any questions, please call your local Account Executive, John Triano at 916-502-4664.

Gen-Probe Sales & Service, Inc.:

Customer:

Signature and Title

Date

Date

v. 022613

PANTHER DESCRIPTION OF STANDARD SERVICE

SERVICES INCLUDED. The services included under Standard Service are the following:

Labor, necessary replacement parts (excluding disposables which include, but are not limited to, TECAN Tips, MTU's, waste bags, and bench covers), and Gen-Probe travel expenses.

Preventative maintenance by a Gen-Probe service technician according to operator's or user's manual.

System repair for reasons other than those listed below under Services Excluded.

Site visits for covered repair services.

Access to Gen-Probe Technical Support telephone support, Monday through Friday, 6:00 AM to 5:00 PM Pacific Time (excluding Gen-Probe holidays).

Telephone Number for all Technical Support: 888-484-4747.

Factory authorized updates or modifications, including parts.

PRO360° REMOTE DIAGNOSTICS.

Representative on site within 24 hours (Monday – Friday) if PRO360° Remote Diagnostics Management is installed.

Representative on site within 48 hours (Monday – Friday) if PRO360° Remote Diagnostics is not installed.

Service response times are predicated upon the System operator being willing and able to transfer System log files to Gen-Probe when instructed by Gen-Probe Technical Support using the protocol described in the System Operator's Manual.

SERVICES EXCLUDED. The services excluded under the Standard Service option are the following:

Any repair required because of causes other than use of the System pursuant to the operator's or user's manual. Such causes include, but are not limited to: misuse, abuse, improper use, casualty loss, neglect, reprogramming error, malfunction or failure of environmental control system, electrical system malfunction or failure, repair maintenance, modification, relocation, or reinstallation by other than Gen-Probe authorized personnel, installation of commercial or non-System software, use of any other tips on the System other than TECAN Tips, or acts of God, fire, flood, earthquake, or other natural causes.

Routine tasks, other than those performed by Gen-Probe during preventative maintenance visits, covered in the operator's or user's manual, such as cleaning and maintenance.

Supply items (including, but not limited to, those items listed in the package insert or manual as "materials required but not provided", TECAN Tips, bleach, squirt bottles, paper towels, and other such items that are needed for general use but not specifically by the System) and consumable items.

Relocation of System.

Note: Labor and materials charges for all of the excluded services will be billed at rates prevailing at the time of service.

CUSTOMER OBLIGATIONS. Prior to any shipment of repair parts or visit by a Gen-Probe service representative, Customer must perform all pertinent diagnostic programs, tests, simple/ basic troubleshooting and provide an accurate description of the failure/error.

REPLACED OR REMOVED PARTS. All parts replaced or removed under this Agreement become the property of Gen-Probe.

Attachment 1
Non-Discrimination and Other Requirements

- A. *General non-discrimination.* No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.
- B. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.
- C. *Section 504 of the Rehabilitation Act of 1973.* Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.
- D. *Compliance with County's Equal Benefits Ordinance.* With respect to the provision of benefits to its employees, Contractor shall comply with Chapter 2.84 of the County Ordinance Code, which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse

Contractor complies with Chapter 2.84 by:

offering the same benefits to its employees with spouses and its employees with domestic partners.

- E. *Discrimination Against Individuals with Disabilities.* The Contractor shall comply fully with the nondiscrimination requirements of 41 C.F.R. 60-741.5(a), which is incorporated herein as if fully set forth.
- F. *History of Discrimination.* Contractor must check one of the two following options, and by executing this Agreement, Contractor certifies that the option selected is accurate:
- ☐ No finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other investigative entity.

- ☐ Finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. If this box is checked, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination.

G. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i) termination of this Agreement;
- ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3-5 years;
- iii) liquidated damages of \$2,500 per violation; and/or
- iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this Section and/or to set off all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission, or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

COUNTY OF SAN MATEO

Equal Benefits Compliance Declaration Form

I Vendor Identification

Name of Contractor: Gen-Probe Sales & Service, Inc.
Contact Person: Jill O'Beirne
Address: 10210 Genetic Center Drive
San Diego, CA 92121
Phone Number: 800-523-5001
Fax Number: 800-288-3141

II Employees

Does the Contractor have any employees? ☒ Yes ☐ No

Does the Contractor provide benefits to spouses of employees? ☒ Yes ☐ No

If the answer to one or both of the above is no, please skip to Section IV.

III Equal Benefits Compliance (Check one)

- ☒ Yes, the Contractor complies by offering equal benefits, as defined by Chapter 2.93, to its employees with spouses and its employees with domestic partners.
☐ Yes, the Contractor complies by offering a cash equivalent payment to eligible employees in lieu of equal benefits.
☐ No, the Contractor does not comply.
☐ The Contractor is under a collective bargaining agreement which began on _____ (date) and expires on _____ (date).

IV Declaration

I declare under penalty of perjury under the laws of the State of California that the foregoing is True and correct, and that I am authorized to bind this entity contractually.

Executed this 30__ day of August_____, 2013, at San Diego
(City)

CA
(State) 2013.08.30
09:53:10 -07'00'
Signature
Sr. Manager, Contracts & Sales Admin
Title

Joanne Dada
Name (Please Print)
33-0767987
Contractor Tax Identification Number