

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

CONTRACT

**34069**

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2  
3 THIS CONTRACT is made and entered, in duplicate, as of August 3, 2015  
4 for reference purposes only, pursuant to Resolution No. RES-15-0070, adopted by the  
5 City Council of the City of Long Beach at its meeting on June 9, 2015, by and between  
6 HOLOGIC, INC., a Delaware corporation ("Contractor"), with a place of business at  
7 10210 Genetic Center Drive, San Diego, California 92121, and the CITY OF LONG  
8 BEACH ("City"), a municipal corporation.

9 WHEREAS, the City requires molecular diagnostic test kits; and

10 WHEREAS, City did by Resolution No. RES-15-0070 determine that the  
11 City's need to purchase molecular diagnostic test kits could only be met by Contractor  
12 and, by reason of the foregoing, no useful purpose would be served by advertising for  
13 bids to purchase such molecular diagnostic test kits, and to do so would constitute an idle  
14 and useless act and an unnecessary expenditure of public funds;

15 NOW, THEREFORE, in consideration of the mutual terms and conditions  
16 contained herein, the parties agree as follows:

17 1. Contractor shall sell, furnish and deliver to City molecular diagnostic  
18 test kits, as authorized by Resolution No. RES-15-0070 and described in Exhibit "A"  
19 attached to this Contract and incorporated by this reference.

20 2. City shall pay Contractor in due course of payments, following  
21 receipt of an invoice from Contractor and upon acceptance from City, for these molecular  
22 diagnostic test kits the prices shown in Exhibit "A," a sum not to exceed Two Hundred  
23 Fifty Thousand Dollars (\$250,000), annually.

24 3. The term of this Contract shall commence on September 1, 2015,  
25 and shall terminate at midnight on August 31, 2016 unless sooner terminated as provided  
26 herein. The City may terminate this Contract by giving thirty (30) days prior notice of  
27 termination to Contractor. The City shall have the option to extend the term of this  
28 Contract upon the same terms and conditions for two (2) additional one-year periods

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1 upon advance written notice to Contractor.

2           4.     Neither this Contract nor any of the moneys that may become due  
3 Contractor hereunder may be assigned without the prior written consent of City.

4           5.     Any notices required hereunder or desired to be given by either party  
5 shall be in writing and personally delivered or deposited in the U.S. Postal Service, first  
6 class postage prepaid, addressed to Contractor at the address stated herein, and to City  
7 at 333 West Ocean Boulevard, Long Beach, California 90802 Attn: City Manager. Notice  
8 shall be deemed given on the date personal delivery is made or on the date of deposit in  
9 the mail, whichever first occurs.

10           6.     City shall have the benefit of any warranty from the manufacturer on  
11 the molecular diagnostic test kits, and Contractor warrants that the molecular diagnostic  
12 test kits are in good working order and free from defect at the time of delivery.

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RECEIVED  
CITY CLERK  
LONG BEACH, CA

OFFICE OF THE CITY ATTORNEY  
CHARLES PARKIN, City Attorney  
333 West Ocean Boulevard, 11th Floor  
Long Beach, CA 90802-4664

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IN WITNESS WHEREOF, the parties have signed this document with all the formalities required by law as of the date first stated above.

HOLOGIC, INC., a Delaware corporation

9/9, 2015

By Joanne Dada  
Name Joanne Dada  
Title Director, Contracts Administration

\_\_\_\_\_, 2015

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

"Contractor"

CITY OF LONG BEACH, a municipal corporation

Oct. 12, 2015

By TZBU EXECUTED PURSUANT  
City Manager TO SECTION 301 OF  
THE CITY CHARTER.

"City" Assistant City Manager

This Contract is approved as to form on Oct. 5, 2015.

CHARLES PARKIN, City Attorney

By Andy J. Anderson  
Deputy

# EXHIBIT "A"



CUSTOMER NAME (“Customer”)	CUSTOMER NUMBER	PURCHASE ORDER NUMBER (required)
CITY OF LONG BEACH	166785	
CONTACT NAME	CONTACT PHONE NUMBER	CONTACT EMAIL
Mimi Lachica	(562) 570-4075	Mimi.Lachica@longbeach.gov
BILL TO ADDRESS	SHIP TO ADDRESS	HOLOGIC REPRESENTATIVE
333 W OCEAN BLVD, LONG BEACH, CA 90802	2525 Grand Avenue, Rm 260 Long Beach, CA 90815	Dan Grunvald

Listed below are the pricing and terms for Hologic’s diagnostic line of products (individually or collectively, “Products”).

**Product Pricing:**

Product Number	Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
303094	APTIMA COMBO 2, 250-TEST KIT, PANTHER	\$ 2,250.00	8.0	\$ 18,000.00
303923	APTIMA COMBO 2, 100-TEST KIT, PANTHER	\$ 900.00	As Needed	\$ -
301041	Kit.APTIMA COMBO 2 Swab Spec Coll	\$ 62.50	3.3	\$ 206.25
301040	Kit.APTIMA COMBO 2 Urine Spec Coll	\$ 62.50	As Needed	\$ -
301162	Collect Kit,Vaginal Swab (IVD)	\$ 62.50	As Needed	\$ -
105575	APTIMA Urine Collection Tubes	\$ 100.00	As Needed	\$ -
105668	APTIMA PENETRABLE CAPS	\$ 100.00	As Needed	\$ -
301110	APTIMA Cntrls Kit (1 tray) IVD	\$ 100.00	As Needed	\$ -
102800	Kit.AccuProbe RGTS 200-TESTS	\$ 79.00	As Needed	\$ -
102850	Kit.AccuProbe, M. GORDONAE	\$ 369.00	As Needed	\$ -
102855	Kit.AccuProbe, M. KANSASII	\$ 369.00	As Needed	\$ -
102860	Kit.AccuProbe, M. TUBERCULOSIS	\$ 369.00	As Needed	\$ -
201791	Kit.Detection Rgt	\$ 29.00	0.6	\$ -
CL0041	Caps, AMP/P.R.S.(CL0045)DIAG.	\$ -	0.4	\$ -
CL0040	Caps, TCR/SEL.(CL0038)DIAG.	\$ -	0.4	\$ -
501616	Spare Caps,30mL tube (501213)Diagnostics	\$ -	0.3	\$ -
302101	Kit, Bleach Enhancer/Cleaning	\$ -	0.2	\$ -
303096	Run Kit, Panther	\$ -	0.6	\$ -
303085	Advanced Cleaning Solution	\$ -	2.4	\$ -
<b>TOTAL</b>				<b>\$ 18,206.25</b>

**Equipment:** Instrumentation/Equipment required will include the following:

Product#	Description	Quantity	Serial # (if already on-site)	Quantity to Ship
303095	Panther Instrument System, DX	1	2090000580	0
105094	Leader 50	1	202199	0
	Standard Service	1	N/A	N/A

Term of Agreement: One (1) Year with annual renewal option Year Two (2) and Year Three (3)

**PAYMENT AND SHIPPING TERMS**

Payment Terms: See payment terms below

Freight Terms: FOB Origin, Prepaid and Add

Delivery: 7 Business days After Receipt of Order

Order Management: Customer shall place all orders concerning this Attachment directly with Hologic, at 10210 Genetic Center Drive, San Diego, CA 92121. Orders may be placed by: Phone at 800-523-5001, Fax at 800-288-3141 or at

[Customerservice5@Hologic.com](mailto:Customerservice5@Hologic.com)

## **SPECIAL CONDITIONS:**

-Firm pricing for the term of the Agreement

-TECAN tips (catalog # 10612513) are the only tips that Hologic has validated for use on the Equipment. Hologic does not support the use of non-TECAN tips on the Equipment as stated in the Equipment Operator's Manual and pursuant to the terms of the warranty for the Equipment. TECAN tips (catalog #10612513) can be directly ordered from TECAN U.S. at 800-352-5128.

## **HOLOGIC TERMS AND CONDITIONS:**

- 1. Term.** The initial term of this Agreement shall begin on the date of full execution by the Parties ("Effective Date") and terminate upon completion of the "Term of Agreement" period designated above ("Initial Term").
- 2. Payment Terms:** Customer shall make all payments due under this Agreement net thirty (30) days from the date of invoice.
- 3. Equipment and Title:** In consideration of the Monthly Purchase Quantity, Hologic shall provide Customer with the use of the Equipment ("Equipment") specified above for the Term, which shall include on-site installation and training by Hologic authorized personnel. Customer shall not remove any markings from the Equipment which identify Hologic as the owner. Hologic will retain title to the Equipment during the Term and may file a standard Uniform Commercial Code ("UCC") Form 1 to perfect its interest in the Equipment. Customer will notify Hologic immediately if any attachment, encumbrance, lien or security interest is filed or claimed and will indemnify Hologic for any loss or damage, including reasonable attorneys' fees. Customer shall remain responsible for the normal care and maintenance of the Equipment.
- 4. Intended Uses.** Products and Equipment are only intended for the uses listed in the applicable operator's manual or instructions for use. Customer assumes all risks associated with non-listed uses of the Products and Equipment and hereby indemnifies and holds Hologic harmless from any claim associated with such non-listed uses
- 5. 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 Hologic prior to the execution of this Agreement. If Hologic is required to pay Taxes (except taxes on Hologic's income), Hologic shall invoice Customer for such Taxes, including interest and penalties.
- 6. Warranty and Service.** Except as otherwise expressly stated in the Agreement i.) Equipment manufactured by Hologic is warranted to the original Customer to perform substantially in accordance with published product specifications for one (1) year starting from the date of shipment, or if installation is required, from the date of installation ("Warranty Period"); ii) replacement parts and remanufactured items are warranted for the remainder of the Warranty Period or ninety (90) days from shipment, whichever is longer; iii) consumable Supplies are warranted to conform to published specifications for a period ending on the expiration date shown on their respective packages; v) licensed Software is warranted to operate in accordance with published specifications; vi) Services are warranted to be supplied in a workman-like manner; vii) non-Hologic Manufactured Equipment is warranted through its manufacturer and such manufacturer's warranties shall extend to Hologic's customers, to the extent permitted by the manufacturer of such non-Hologic Manufactured Equipment. Hologic does not warrant that use of Products will be uninterrupted or error-free, or that Products will operate with non-Hologic authorized third-party products.
- 7. Warranty Claims and Remedies.** In the event of any warranty claim, Hologic will replace with new or remanufactured items any Equipment, part, component, or consumable supply that is in breach of warranty, and will use reasonable efforts to promptly fix or provide a workaround for any Software defect or bug which prevents operation in substantial conformity with functional specifications. Alternatively, Hologic may elect to repay or credit to Customer an amount equal to the purchase price of the defective Equipment, component, Software, consumable supply, or Service. Items replaced shall become Hologic property. All claims shall be initiated by contacting Hologic within the applicable Warranty Period and thirty (30) days after discovery of the breach or non-conformity. Hologic must be given reasonable access and an opportunity to inspect all associated materials. If Hologic and Customer are unable to settle any claim and Customer has not notified Hologic within one (1) year after the claim arises, Customer shall be barred from instituting any legal action thereafter. These remedies shall comprise Hologic's entire liability and Customer's exclusive remedy for breach of warranty and are in lieu of any other remedies at law or equity. **HOLOGIC'S ENTIRE WARRANTY RESPONSIBILITY IS EXPRESSLY LIMITED TO REPAIR OR REPLACEMENT (AT HOLOGIC'S OPTION AND IN THE FORM ORIGINALLY SHIPPED) OF PRODUCT OR CORRECTION OF SERVICE SUBJECT TO ANY CLAIM, OR, AT HOLOGIC'S ELECTION, REPAYMENT OF, OR CREDITING CUSTOMER WITH, AN AMOUNT EQUAL TO THE HOLOGIC PRICE, FEE OR CHARGE THEREFOR. THE FOREGOING WARRANTIES ARE IN LIEU OF AND EXCLUDE ALL OTHER WARRANTIES NOT EXPRESSLY SET FORTH HEREIN, WHETHER EXPRESS OR IMPLIED BY OPERATION OF LAW OR OTHERWISE, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SUCH LIMITED WARRANTY IS GIVEN SOLELY TO THE ORIGINAL CUSTOMER AND IS NOT GIVEN TO, NOR MAY IT BE RELIED UPON BY, ANY THIRD PARTY INCLUDING, WITHOUT LIMITATION, CUSTOMERS OF CUSTOMER. THIS WARRANTY IS VOID UPON TRANSFER OF PRODUCT BY CUSTOMER TO ANY ENTITY WHO HAS LESS THAN FIFTY (50) PERCENT OWNERSHIP IN THE PRODUCT. SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES SO THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER. CUSTOMER MAY ALSO HAVE OTHER RIGHTS, WHICH VARY, FROM STATE TO STATE. These warranties do not apply to any item that is: (a) repaired, moved, or altered other than by Hologic authorized service personnel; (b) subjected to physical (including thermal or electrical) abuse, stress, or misuse; (c) stored, maintained, or operated in any manner inconsistent with applicable Hologic specifications or instructions, including Customer's refusal to allow Hologic recommended Software upgrades; or (d) designated as supplied subject to a non-Hologic warranty or on a pre-release or "as-is" basis.**
- 8. Limitation of Liability.** EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, HOLOGIC SHALL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL LOSSES, DAMAGES, OR EXPENSES (INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, DATA, OR USE), DIRECTLY OR INDIRECTLY ARISING FROM THE SALE, HANDLING, SERVICE OR USE OF PRODUCT ORDERED OR FURNISHED PURSUANT TO THIS AGREEMENT, OR FROM ANY CAUSE RELATING THERETO UNLESS EXPRESSLY AGREED TO BY THE PARTIES IN WRITING. EXCEPT FOR PERSONAL INJURY OR DEATH TO THE EXTENT RESULTING FROM HOLOGIC'S NEGLIGENCE OR INTENTIONALLY WRONGFUL ACTS OR OMISSIONS, IN NO EVENT SHALL HOLOGIC BE LIABLE UNDER ANY LEGAL THEORY OR FOR ANY CAUSE WHATSOEVER, WHETHER BASED UPON WARRANTY, CONTRACT, TORT, NEGLIGENCE, OR OTHER THEORY, EVEN IF ADVISED OF THE

POSSIBILITY THEREOF, FOR ANY AMOUNT IN EXCESS OF THE PRICE, FEE OR CHARGE THEREFOR RECEIVED BY HOLOGIC.

9. **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, Warranty Claims and Remedies and Limitation of Liability above. In the event of loss or damage, Customer will pay Hologic the depreciated price of the lost or damaged item of Equipment.
10. **Default:** The occurrence of any of the following events shall constitute a default ("Default") by either applicable Party: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; and/or (b) either Party's failure to materially perform any covenant or condition of this Agreement. In the event of Default by Customer hereunder, all indebtedness of Customer may, at the option of Hologic and without demand or notice of any kind, immediately become due and payable, and in addition to all other remedies, Hologic may (i) require Customer to return any Hologic-owned Equipment and/or (ii) immediately terminate this Agreement. The non-Defaulting Party shall be entitled to recover from the Defaulting Party any and all expenses and damages that the non-Defaulting Party sustains by reason of Default including, but not limited to, reasonable attorneys' fees, and in the case of Hologic, all expenses of repossession, removal, storage 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 the non-defaulting Party as to that right or remedy or as to any other rights or remedies provided by applicable law.
11. **Confidential Information.** Both Parties agree to hold in strict confidence the terms of the Agreement and all information provided to the other in connection with the performance of their respective obligations under the Agreement, including without limitation, financial information and information relating to the Customer and pricing, except to the extent that disclosure is required by applicable law. Notwithstanding the above, the terms and conditions of the Agreement will not be disclosed to any third-party without the prior written consent of the other Party, except either Party may disclose the terms and conditions of the Agreement to its employees, professional advisors, agents or independent contractors that are providing contractual services for the applicable Party and who require knowledge of the terms and conditions of the Agreement, so long as such individuals are subject to applicable non-disclosure agreements.
12. **Term Completion.** At the end of the Term, Customer agrees to arrange the return of any Hologic-owned Equipment promptly to Hologic.
13. Any additional terms and 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.

Accepted and agreed to:

<b>Gen-Probe Sales &amp; Service, Inc. ("Hologic")</b> (by its authorized representative)
<b>Joanne Dada, Director, Contracts</b> <b>Administration</b>

<b>Customer</b> (by its authorized representative)	
<b>Name and Title (Print)</b>	
<b>Signature</b>	<b>Date</b>

*The offer contained in this Agreement is null and void if this Agreement is not executed by Customer (and returned to Hologic) on or before June 26, 2015 ("Offer Expiration Date"), or accepted by Hologic as indicated by Hologic's signature above.*

**PLEASE FAX OR EMAIL COMPLETED AND SIGNED AGREEMENT  
 TO DIAGSALESADMIN@HOLOGIC.COM OR 1-866-523-6828**

Gen-Probe Sales & Service, Inc. is a subsidiary of Hologic, Inc.



## DESCRIPTION OF STANDARD SERVICE

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

- Labor, travel expenses, and any necessary replacement parts (excluding disposables which include, but are not limited to, tips, MTU's, TTU's, waste bags, and bench covers), during normal business hours. Normal working hours are defined as Monday-Friday, 8:30 a.m. - 5:30 p.m. local time (excluding Hologic holidays).
- Preventative maintenance by Hologic service technician according to operator's or user's manual (normal working hours Monday through Friday).
- Equipment repair for reasons other than those listed below under "Services Excluded".
- Access to Hologic Technical Support telephone support, Monday through Friday, 5:00 a.m. to 5:00 p.m. Pacific Standard Time (excluding Hologic holidays).
- Telephone number for Technical Support: 888-484-4747
- Factory authorized updates or modifications, including parts.
- Up to (2) Pro360 and/or LIS configuration changes  
Exception: If service technician already on-site or has service scheduled, the LIS and/or Pro360 can be modified at that time at no charge and can exceed the 2 allotted.

### Service Representative Dispatch and 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 Equipment operator being willing and able to transfer Equipment log files to Hologic when instructed by Hologic Technical Support using the protocol described in the Equipment 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 Equipment 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 Equipment, electrical Equipment malfunction or failure, repair maintenance, modification, relocation, or reinstallation by other than Hologic authorized personnel, installation of commercial or non-Equipment software, use of any other tips on the Equipment other than TECAN Tips, or acts of God, fire, flood, earthquake, or other natural causes.
- Routine tasks, other than those performed by Hologic 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 Equipment) and consumable items.
- Relocation of Equipment.
- LIS and Pro360 configuration changes which exceed the above allotted (2) (e.g. urgent requests to change Pro360/LIS).

Note: Labor, travel, and material 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 Hologic 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 Exhibit become the property of Hologic.

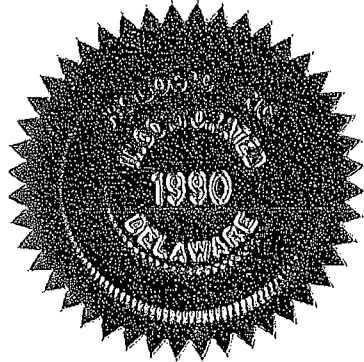


**SECRETARY'S CERTIFICATE**

I, Anne M. Liddy, do hereby certify that I am the duly elected and qualified Vice President, Assistant General Counsel and Assistant Secretary of Hologic, Inc., a Delaware Corporation (hereinafter the "Company"). I further certify the following:

1. Joanne Dada, in her capacity as Director, Contracts Administration, is authorized to negotiate, execute and deliver all contracts, bids and related documents in connection with the sale of products by the Company and its subsidiaries and affiliates.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Company this 2<sup>th</sup> day of June, 2015.



*Anne M. Liddy*

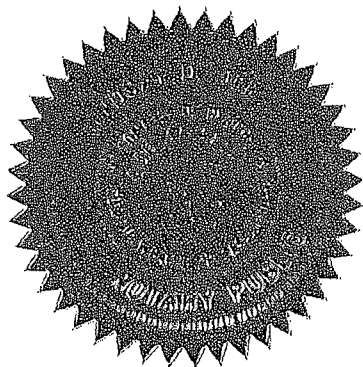
Anne M. Liddy

(SEAL)

Commonwealth of Massachusetts

County of Middlesex

On this 2<sup>th</sup> day of June, 2015, before me, the undersigned notary public, personally appeared Anne M. Liddy, who is personally known to me to be the person whose name is signed on the attached document, and acknowledged to me that he signed it voluntarily for its stated purpose in his capacity as Assistant Secretary of Hologic, Inc.



*Lindsay D. Dee*  
\_\_\_\_\_  
Notary Public

(SEAL)



LINDSAY D. DEE  
NOTARY PUBLIC  
Commonwealth of Massachusetts  
My Commission Expires  
August 27, 2021