



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

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and effect.

IN WITNESS WHEREOF, the parties have caused this document to be duly executed with all formalities required by law as of the date first stated above.

GEN-PROBE SALES & SERVICE, INC., a Delaware corporation

November 15, 2013

By [Signature]  
Name MARK J. CASEY  
Title VICE PRESIDENT AND SECRETARY

NOVEMBER 18, 2013

By [Signature]  
Name GLENN P. MUIR  
Title EXECUTIVE VP TREASURER AND ASSISTANT SECRETARY

"Contractor"

CITY OF LONG BEACH, a municipal corporation

12.17, 2013

By [Signature] **Assistant City Manager**  
City Manager

"City"

EXECUTED PURSUANT TO SECTION 301 OF THE CITY CHARTER.

This Third Amendment to Contract No. 32439 is approved as to form on

12/3, 2013.

CHARLES PARKIN, City Attorney

By [Signature]  
Deputy

# EXHIBIT "A-2"

September 17, 2013

City of Long Beach Health Dept.  
 ATTN: Mimi Lachica, Lab Service Officer  
 2525 Grand Avenue, RM 260  
 Long Beach, CA 90815

To: Ms. Lachica, Lab Service Officer

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

Product Number	Product Description	Price/Kit	Monthly Purchase Quantity	Extended Monthly Price
303094	APTIMA COMBO 2, 250-TEST KIT, PAN	\$ 2,250.00	8.0	\$ 18,000.00
302923	APTIMA COMBO 2, 100-TEST KIT, PAN	\$ 900.00	As Needed	\$ -
301041	Kit, APTIMA COMBO 2 Swab Spec Coll	\$ 62.50	3.3	\$ 206.25
301162	Collect Kit, Vaginal Swab (IVD)	\$ 62.50	As Needed	\$ -
105668	APTIMA PENETRABLE CAPS	\$ 100.00	As Needed	\$ -
301110	APTIMA Cntrls Kit (1 tray) IVD	\$ 100.00	As Needed	\$ -
CL0041	Caps, AMP/P.R.S.(CL0045)DIAG.	\$ -	0.4	\$ -
CL0040	Caps, TCR/SEL.(CL0038) DIAG.	\$ -	0.4	\$ -
501616	Spare Caps, 30mL tube (501213) Diagnostic	\$ -	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>

Instrumentation/equipment required will include the following:

Quantity & Instrumentation	Description
1 x 303095	Panther Instrument System, DX

**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                      FCA Origin Prepaid and Add  
 Delivery                                7 Business days After Receipt of Order

**Firm Pricing for the term of the Agreement**

\*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 City of Long Beach Health Dept. and connected to Gen-Probe. If PRO360® has not been installed, Gen-Probe will extend the guaranteed service response time to 48 hrs.

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

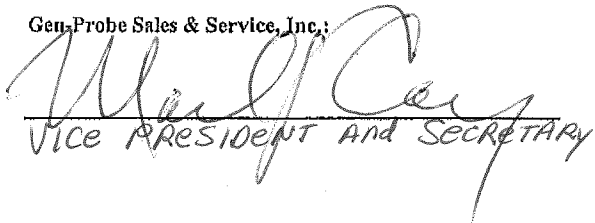
The obligations of Customer hereunder shall not apply to materials or information which (a) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (b) is known by Customer at the time of receiving such information as evidenced by its records; (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 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.

Should you have any questions, please call your local Sales Representative at 800-523-5001.

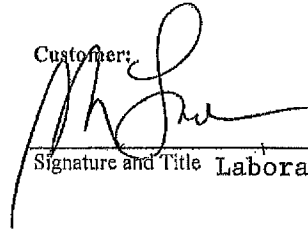
*Linda Harshman*  
ACCOUNT EXECUTIVE

Gen-Probe Sales & Service, Inc.:

  
VICE PRESIDENT AND SECRETARY

NOVEMBER 15, 2013  
Date

Customer:

  
Signature and Title Laboratory Services Officer

September 17, 2013  
Date

v. 022613