



CONTRACT NO. MA-042-21011532

FOR

GENEXPERT CALIBRATION SERVICES

BETWEEN

THE COUNTY OF ORANGE
HEALTH CARE AGENCY

AND

CEPHEID

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MA-042-21011532
FOR
GENEXPERT CALIBRATION SERVICES
WITH
CEPHEID

This Contract Number MA-042-21011532 ("Contract"), is made and entered on August 1, 2021 ("Effective Date") between CEPHEID ("Contractor"), with a place of business at 904 Caribbean Drive, Sunnyvale, CA 94089 and County of Orange, a political subdivision of the State of California ("County"), through its Health Care Agency with a place of business at 200 W. Santa Ana Blvd., Suite 650, Santa Ana, CA 92701-7506. Contractor and County may sometimes be referred to hereinafter individually as "Party" or collectively as "Parties."

ATTACHMENTS

This Contract is comprised of this document and the following Attachments, which are attached hereto and incorporated by reference into this Contract:

Attachment A – Scope of Work

Attachment B – Compensation, Pricing, Payment and Invoicing

Attachment C – Cepheid Terms and Conditions

RECITALS

WHEREAS, Contractor and County are entering into this Contract for GENEXPERT CALIBRATION SERVICES under a firm fixed fee Contract; and

WHEREAS, Contractor agrees to provide services to the County as further set forth in the Scope of Work, attached hereto as Attachment A; and

WHEREAS, County agrees to pay Contractor based on the schedule of fees set forth in Compensation, Pricing, Payment and Invoicing, attached hereto as Attachment B; and

NOW, THEREFORE, the Parties mutually agree as follows:

DEFINITIONS

DPA shall mean the Deputy Purchasing Agent assigned to this Contract.

ARTICLES

General Terms and Conditions:

- A. **Governing Law and Venue:** This Contract has been negotiated and executed in the state of California and shall be governed by and construed under the laws of the state of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure Section 394. Furthermore, the parties specifically agree to waive any and all rights to request that an action be transferred for adjudication to another county.

- B. **Entire Contract:** This Contract contains the entire Contract between the parties with respect to the matters herein, and there are no restrictions, promises, warranties or undertakings other than those set forth herein or referred to herein. No exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing. Electronic acceptance of any additional terms, conditions or supplemental Contracts by any County employee or agent, including but not limited to installers of software, shall not be valid or binding on County unless accepted in writing by County's Purchasing Agent or designee.

- C. **Amendments:** No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

- D. **Taxes:** Unless otherwise provided herein or by law, price quoted does not include California state sales or use tax. Out-of-state Contractors shall indicate California Board of Equalization permit number and sales permit number on invoices, if California sales tax is added and collectable. If no permit numbers are shown, sales tax will be deducted from payment. The Auditor-Controller will then pay use tax directly to the State of California in lieu of payment of sales tax to the Contractor.

- E. **Delivery:** Time of delivery of goods or services is of the essence in this Contract. County reserves the right to refuse any goods or services and to cancel all or any part of the goods not conforming to applicable specifications, drawings, samples or descriptions or services that do not conform to the prescribed statement of work. Acceptance of any part of the order for goods shall not bind County to accept future shipments nor deprive it of the right to return goods already accepted at Contractor's expense. Over shipments and under shipments of goods shall be only as agreed to in writing by County. Delivery shall not be deemed to be complete until all goods or services have actually been received and accepted in writing by County.

- F. **Acceptance Payment:** Unless otherwise agreed to in writing by County, 1) acceptance shall not be deemed complete unless in writing and until all the goods/services have actually been received, inspected, and tested to the satisfaction of County, and 2) payment shall be made in arrears after satisfactory acceptance.

- G. **Warranty:** Contractor expressly warrants that the goods covered by this Contract are 1) free of liens or encumbrances, 2) merchantable and good for the ordinary purposes for which they are used, and 3) fit for the particular purpose for which they are intended. Acceptance of this order shall constitute an agreement upon Contractor's part to indemnify, defend and hold County and its indemnitees as identified in paragraph "Z" below, and as more fully described in paragraph "Z," harmless from liability, loss, damage and expense, including reasonable counsel fees, incurred or sustained by County by reason of the failure of the goods/services to conform to such warranties, faulty work performance, negligent or unlawful acts, and non-compliance with any applicable state or federal codes, ordinances, orders, or statutes, including the Occupational Safety and Health Act (OSHA) and the California Industrial Safety Act. Such remedies shall be in addition to any other remedies provided by law.
- H. **Patent/Copyright Materials/Proprietary Infringement:** Unless otherwise expressly provided in this Contract, Contractor shall be solely responsible for clearing the right to use any patented or copyrighted materials in the performance of this Contract. Contractor warrants that any software as modified through services provided hereunder will not infringe upon or violate any patent, proprietary right, or trade secret right of any third party. Contractor agrees that, in accordance with the more specific requirement contained in paragraph "Z" below, it shall indemnify, defend and hold County and County Indemnitees harmless from any and all such claims and be responsible for payment of all costs, damages, penalties and expenses related to or arising from such claim(s), including, costs and expenses but not including attorney's fees.
- I. **Assignment:** The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned by Contractor without the express written consent of County. Any attempt by Contractor to assign the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.
- J. **Non-Discrimination:** In the performance of this Contract, Contractor agrees that it will comply with the requirements of Section 1735 of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons. Contractor acknowledges that a violation of this provision shall subject Contractor to penalties pursuant to Section 1741 of the California Labor Code.
- K. **Termination:** In addition to any other remedies or rights it may have by law, County has the right to immediately terminate this Contract without penalty for cause or after 30 days' written notice without cause, unless otherwise specified. Cause shall be defined as any material breach of contract, any misrepresentation or fraud on the part of the Contractor. Exercise by County of its right to terminate the Contract shall relieve County of all further obligation.
- L. **Consent to Breach Not Waiver:** No term or provision of this Contract shall be deemed waived and no breach excused, unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented. Any consent by any party to, or waiver of, a breach by the other, whether express or implied, shall not constitute consent to, waiver of, or excuse for any other different or subsequent breach.

M. **Independent Contractor:** Contractor shall be considered an independent contractor and neither Contractor, its employees, nor anyone working under Contractor shall be considered an agent or an employee of County. Neither Contractor, its employees nor anyone working under Contractor shall qualify for workers' compensation or other fringe benefits of any kind through County.

N. **Performance Warranty: Deleted.**

O. **Insurance Requirements:**

Prior to the provision of services under this Contract, the Contractor agrees to purchase all required insurance at Contractor's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. Contractor agrees to keep such insurance coverage, Certificates of Insurance, and endorsements on deposit with the County during the entire term of this Contract. In addition, all subcontractors performing work on behalf of Contractor pursuant to this Contract shall obtain insurance subject to the same terms and conditions as set forth herein for Contractor.

Contractor shall ensure that all subcontractors performing work on behalf of Contractor pursuant to this Contract shall be covered under Contractor's insurance as an Additional Insured or maintain insurance subject to the same terms and conditions as set forth herein for Contractor. Contractor shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from Contractor under this Contract. It is the obligation of Contractor to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by Contractor through the entirety of this Contract for inspection by County representative(s) at any reasonable time.

All self-insured retentions (SIRs) shall be clearly stated on the Certificate of Insurance. Any self-insured retention (SIR) in an amount in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee, upon review of Contractor's current audited financial report. If Contractor's SIR is approved, Contractor, in addition to, and without limitation of, any other indemnity provision(s) in this Contract, agrees to all of the following:

- 1) In addition to the duty to indemnify and hold the County harmless against any and all liability, claim, demand or suit resulting from Contractor's, its agents, employee's or subcontractor's performance of this Contract, Contractor shall defend the County at its sole cost and expense with counsel approved by Board of Supervisors against same; and
- 2) Contractor's duty to defend, as stated above, shall be absolute and irrespective of any duty to indemnify or hold harmless; and
- 3) The provisions of California Civil Code Section 2860 shall apply to any and all actions to which the duty to defend stated above applies, and the Contractor's SIR provision shall be interpreted as though the Contractor was an insurer and the County was the insured.

If the Contractor fails to maintain insurance acceptable to the County for the full term of

this Contract, the County may terminate this Contract.

Qualified Insurer

The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**). It is preferred, but not mandatory, that the insurer be licensed to do business in the state of California (California Admitted Carrier).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

The policy or policies of insurance maintained by the Contractor shall provide the minimum limits and coverage as set forth below:

<u>Coverage</u>	<u>Minimum Limits</u>
Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, non-owned and hired vehicles	\$1,000,000 per occurrence
Workers Compensation	Statutory
Employers Liability Insurance	\$1,000,000 per occurrence

Required Coverage Forms

The Commercial General Liability coverage shall be written on Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.

The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 0012, CA 00 20, or a substitute form providing coverage at least as broad.

Required Endorsements

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

- 1) An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange its elected and appointed officials, officers, agents and employees*** as Additional Insureds, or provide blanket coverage, which will state ***AS REQUIRED BY WRITTEN CONTRACT***.
- 2) A primary non-contributing endorsement using ISO form CG 20 01 04 13, or a form at least as broad evidencing that the Contractor's insurance is primary and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against the **County of Orange, its elected and appointed officials, officers, agents and employees** or provide blanket coverage, which will state **AS REQUIRED BY WRITTEN CONTRACT**.

All insurance policies required by this Contract shall waive all rights of subrogation against the County of Orange, its elected and appointed officials, officers, agents and employees when acting within the scope of their appointment or employment.

Contractor shall notify County in writing within thirty (30) days of any policy cancellation and ten (10) days for non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.

The Commercial General Liability policy shall contain a severability of interests clause also known as a "separation of insureds" clause (standard in the ISO CG 0001 policy).

Insurance certificates should be forwarded to the agency/department address listed on the solicitation.

If the Contractor fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.

County expressly retains the right to require Contractor to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify Contractor in writing of changes in the insurance requirements. If Contractor does not deposit copies of acceptable Certificates of Insurance and endorsements with County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to Contractor, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit Contractor's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

P. **Changes:** Contractor shall make no changes in the work or perform any additional work without the County's specific written approval.

Q. **Change of Ownership/Name, Litigation Status, Conflicts with County Interests:** Contractor agrees that if there is a change or transfer in ownership of Contractor's business prior to completion of this Contract, and the County agrees to an assignment of the Contract, the new owners shall be required under the terms of sale or other instruments of transfer to assume Contractor's duties and obligations contained in this Contract, and complete them to the satisfaction of the County.

County reserves the right to immediately terminate the Contract in the event the County determines that the assignee is not qualified or is otherwise unacceptable to the County for the provision of services under the Contract.

In addition, Contractor has the duty to notify the County in writing of any change in the Contractor's status with respect to name changes that do not require an assignment of the Contract. The Contractor is also obligated to notify the County in writing if the Contractor becomes a party to any litigation against the County, or a party to litigation that may reasonably affect the Contractor's performance under the Contract, as well as any potential conflicts of interest between Contractor and County that may arise prior to or during the period of Contract performance. While Contractor will be required to provide this information without prompting from the County any time there is a change in Contractor's name, conflict of interest or litigation status, Contractor must also provide an update to the County of its status in these areas whenever requested by the County.

The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with County interests. In addition to the Contractor, this obligation shall apply to the Contractor's employees, agents, and subcontractors associated with the provision of goods and services provided under this Contract. The Contractor's efforts shall include, but not be limited to establishing rules and procedures preventing its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers in the performance of their duties.

- R. **Force Majeure:** Contractor shall not be assessed with liquidated damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided Contractor gives written notice of the cause of the delay to County within 36 hours of the start of the delay and Contractor avails himself of any available remedies.
- S. **Confidentiality:** Contractor agrees to maintain the confidentiality of all County and County-related records and information pursuant to all statutory laws relating to privacy and confidentiality that currently exist or exist at any time during the term of this Contract. All such records and information shall be considered confidential and kept confidential by Contractor and Contractor's staff, agents and employees.
- T. **Compliance with Laws:** Contractor represents and warrants that services to be provided under this Contract shall fully comply, at Contractor's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the services at the time services are provided to and accepted by County. Contractor acknowledges that County is relying on Contractor to ensure such compliance, and pursuant to the requirements of paragraph "Z" below, Contractor agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.
- U. **Freight:** Prior to the County's express acceptance of delivery of products. Contractor assumes full responsibility for all transportation, transportation scheduling, packing, handling, insurance, and other services associated with delivery of all products deemed necessary under this Contract.
- V. **Severability:** If any term, covenant, condition or provision of this Contract is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the

provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

- W. **Attorney Fees:** In any action or proceeding to enforce or interpret any provision of this Contract, each party shall bear their own attorney's fees, costs and expenses.
- X. **Interpretation:** This Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract. In addition, each party had been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other party hereto or by any person representing them, or both. Accordingly, any rule or law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the party that has drafted it is not applicable and is waived. The provisions of this Contract shall be interpreted in a reasonable manner to effect the purpose of the parties and this Contract.
- Y. **Employee Eligibility Verification:** The Contractor warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. The Contractor shall obtain, from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations including, but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. §1324 et seq., as they currently exist and as they may be hereafter amended. The Contractor shall retain all such documentation for all covered employees for the period prescribed by the law. The Contractor shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, its agents, officers, and employees from employer sanctions and any other liability which may be assessed against the Contractor or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- Z. **Indemnification:** Contractor agrees to indemnify, defend with counsel approved in writing by County, and hold County, its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising from or related to the services, products or other performance provided by Contractor pursuant to this Contract. If judgment is entered against Contractor and County by a court of competent jurisdiction because of the concurrent active negligence of County or County Indemnitees, Contractor and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment.
- AA. **Audits/Inspections:** Contractor agrees to permit the County's Auditor-Controller or the Auditor-Controller's authorized representative (including auditors from a private auditing firm hired by the County) access during normal working hours to all books, accounts, records, reports, files, financial records, supporting documentation, including payroll and accounts payable/receivable records, and other papers or property of Contractor for the purpose of auditing or inspecting any aspect of performance under this Contract. The inspection and/or audit will be confined to those matters connected with the performance

of the Contract including, but not limited to, the costs of administering the Contract. The County will provide reasonable notice of such an audit or inspection.

The County reserves the right to audit and verify the Contractor's records before final payment is made.

Contractor agrees to maintain such records for possible audit for a minimum of three years after final payment, unless a longer period of records retention is stipulated under this Contract or by law. Contractor agrees to allow interviews of any employees or others who might reasonably have information related to such records. Further, Contractor agrees to include a similar right to the County to audit records and interview staff of any subcontractor related to performance of this Contract.

Should the Contractor cease to exist as a legal entity, the Contractor's records pertaining to this agreement shall be forwarded to the County's project manager.

- BB. **Contingency of Funds:** Contractor acknowledges that funding or portions of funding for this Contract may be contingent upon state budget approval; receipt of funds from, and/or obligation of funds by, the state of California to County; and inclusion of sufficient funding for the services hereunder in the budget approved by County's Board of Supervisors for each fiscal year covered by this Contract. If such approval, funding or appropriations are not forthcoming, or are otherwise limited, County may immediately terminate or modify this Contract without penalty.
- CC. **Expenditure Limit:** The Contractor shall notify the County of Orange assigned Deputy Purchasing Agent in writing when the expenditures against the Contract reach 75 percent of the dollar limit on the Contract. The County will not be responsible for any expenditure overruns and will not pay for work exceeding the dollar limit on the Contract unless a change order to cover those costs has been issued.

Additional Terms and Conditions:

- 1. **Scope of Contract:** This Contract specifies the contractual terms and conditions by which the County will procure GENEXPERT CALIBRATION SERVICES from Contractor as further detailed in the Scope of Work, identified and incorporated herein by this reference as "Attachment A".
- 2. **Term of Contract:** This Contract shall commence on August 1, 2021 through and including July 31, ~~2023, unless otherwise terminated by County. This Contract is renewable for three additional years~~2026.
- 3. **Breach of Contract:** The failure of the Contractor to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event the County may, and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:
 - a) Terminate the Contract immediately, pursuant to Section K herein;
 - b) Afford the Contractor written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
 - c) Discontinue payment to the Contractor for and during the period in which the Contractor is in breach; and

- d) Offset against any monies billed by the Contractor but yet unpaid by the County those monies disallowed pursuant to the above.
- 4. **Civil Rights:** Contractor attests that services provided shall be in accordance with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975 as amended; Title II of the Americans with Disabilities Act of 1990, and other applicable State and federal laws and regulations prohibiting discrimination on the basis of race, color, national origin, ethnic group identification, age, religion, marital status, sex or disability.
- 5. **Conflict of Interest – Contractor’s Personnel:** The Contractor shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the Contractor; the Contractor’s employees, agents, and subcontractors associated with accomplishing work and services hereunder. The Contractor’s efforts shall include, but not be limited to establishing precautions to prevent its employees, agents, and subcontractors from providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to influence or appear to influence County staff or elected officers from acting in the best interests of the County.
- 6. **Conflict of Interest – County Personnel:** The County of Orange Board of Supervisors policy prohibits its employees from engaging in activities involving a conflict of interest. The Contractor shall not, during the period of this Contract, employ any County employee for any purpose.
- 7. **Contractor’s Project Manager and Key Personnel: Deleted.**
- 8. **Disputes – Contract:**
 - A. The parties shall deal in good faith and attempt to resolve potential disputes informally. If the dispute concerning a question of fact arising under the terms of this Contract is not disposed of in a reasonable period of time by the Contractor’s Project Manager and the County’s Project Manager, such matter shall be brought to the attention of the County Deputy Purchasing Agent by way of the following process:
 - 1. The Contractor shall submit to the agency/department assigned Deputy Purchasing Agent a written demand for a final decision regarding the disposition of any dispute between the parties arising under, related to, or involving this Contract, unless the County, on its own initiative, has already rendered such a final decision.
 - 2. The Contractor’s written demand shall be fully supported by factual information, and, if such demand involves a cost adjustment to the Contract, the Contractor shall include with the demand a written statement signed by a senior official indicating that the demand is made in good faith, that the supporting data are accurate and complete, and that the amount requested accurately reflects the Contract adjustment for which the Contractor believes the County is liable.
 - B. Pending the final resolution of any dispute arising under, related to, or involving this Contract, the Contractor agrees to diligently proceed with the performance of this Contract, including the delivery of goods and/or provision of services. The Contractor’s failure to diligently proceed shall be considered a material breach of this Contract.

Any final decision of the County shall be expressly identified as such, shall be in writing, and shall be signed by the County Deputy Purchasing Agent or his designee. If the County fails to render a decision within 90 days after receipt of the Contractor's demand, it shall be deemed a final decision adverse to the Contractor's contentions. Nothing in this section shall be construed as affecting the County's right to terminate the Contract for cause or termination for convenience as stated in section K herein.

9. **Drug-Free Workplace:** The Contractor hereby certifies compliance with Government Code Section 8355 in matters relating to providing a drug-free workplace. The Contractor will:

1. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
2. Establish a drug-free awareness program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - a. The dangers of drug abuse in the workplace;
 - b. The organization's policy of maintaining a drug-free workplace;
 - c. Any available counseling, rehabilitation and employee assistance programs; and
 - d. Penalties that may be imposed upon employees for drug abuse violations.
3. Provide as required by Government Code Section 8355(a)(3) that every employee who works under this Contract:
 - a. Will receive a copy of the company's drug-free policy statement; and
 - b. Will agree to abide by the terms of the company's statement as a condition of employment under this Contract.

Failure to comply with these requirements may result in suspension of payments under the Contract or termination of the Contract or both, and the Contractor may be ineligible for award of any future County contracts if the County determines that any of the following has occurred:

1. The Contractor has made false certification, or
2. The Contractor violates the certification by failing to carry out the requirements as noted above.

10. **Emergency/Declared Disaster Requirements:** In the event of an emergency or if Orange County is declared a disaster area by the County, state or federal government, this Contract may be subjected to unusual usage. The Contractor shall service the County during such an emergency or declared disaster under the same terms and conditions that apply during non-emergency/disaster conditions. The pricing quoted by the Contractor shall apply to serving the County's needs regardless of the circumstances. If the Contractor is unable to supply the goods/services under the terms of the Contract, then the Contractor shall provide proof of such disruption and a copy of the invoice for the goods/services from the Contractor's supplier(s). Additional profit margin as a result of supplying goods/services during an emergency or a declared disaster shall not be permitted. In the event of an emergency or declared disaster, emergency purchase order numbers will be assigned. All applicable invoices from the Contractor shall show both the emergency purchase order number and the Contract number.

11. **Errors and Omissions:** All reports, files and other documents prepared and submitted by Contractor shall be complete and shall be carefully checked by the professional(s) identified by Contractor as project manager and key personnel attached hereto, prior to submission to the County. Contractor agrees that County review is discretionary and Contractor shall not assume that the County will discover errors and/or omissions. If the County discovers any errors or omissions prior to approving Contractor's reports, files and other written documents, the reports, files or documents will be returned to Contractor for correction. Should the County or others discover errors or omissions in the reports, files or other written documents submitted by the Contractor after County approval thereof, County approval of Contractor's reports, files or documents shall not be used as a defense by Contractor in any action between the County and Contractor, and the reports, files or documents will be returned to Contractor for correction.
12. **Equal Employment Opportunity:** The Contractor shall comply with U.S. Executive Order 11246 entitled, "Equal Employment Opportunity" as amended by Executive Order 11375 and as supplemented in Department of Labor regulations (41 CFR, Part 60) and applicable state of California regulations as may now exist or be amended in the future. The Contractor shall not discriminate against any employee or applicant for employment on the basis of race, color, national origin, ancestry, religion, sex, marital status, political affiliation or physical or mental condition.

Regarding handicapped persons, the Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is qualified. The Contractor agrees to provide equal opportunity to handicapped persons in employment or in advancement in employment or otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicaps in all employment practices such as the following: employment, upgrading, promotions, transfers, recruitments, advertising, layoffs, terminations, rate of pay or other forms of compensation, and selection for training, including apprenticeship. The Contractor agrees to comply with the provisions of Sections 503 and 504 of the Rehabilitation Act of 1973, as amended, pertaining to prohibition of discrimination against qualified handicapped persons in all programs and/or activities as detailed in regulations signed by the Secretary of the Department of Health and Human Services effective June 3, 1977, and found in the Federal Register, Volume 42, No. 68 dated May 4, 1977, as may now exist or be amended in the future.

Regarding Americans with disabilities, Contractor agrees to comply with applicable provisions of Title 1 of the Americans with Disabilities Act enacted in 1990 as may now exist or be amended in the future.

13. **News/Information Release:** The Contractor agrees that it will not issue any news releases in connection with either the award of this Contract or any subsequent amendment of or effort under this Contract without first obtaining review and written approval of said news releases from the County through the County's Project Manager.
14. **Notices:** Any and all notices, requests demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing with a copy provided to the assigned Deputy Purchasing Agent (DPA), except through the course of the parties' project managers' routine exchange of information and cooperation during the terms of the work and services. Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt or no greater than four (4) calendar days after

being mailed by US certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day. All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

For Contractor:	Name:	CEPHEID
	Attention:	Shaelyn DeLong, Territory Sales Executive
	Address:	904 Caribbean Drive Sunnyvale, CA 94089
	Telephone:	888-838-3222
	Mobil:	949-237-1284
	E-mail:	shaelyn.delong@CEPHEID.com

For County:	Name:	County of Orange HCA/Purchasing
	Attention:	Patrick Clark
	Address:	200 W. Santa Ana Blvd Ste. 650 Santa Ana, CA 92701
	Telephone:	(714) 834-5381
	E-mail:	pclark@ochca.com

CC:	Name:	HCA Public Health Lab
	Attention:	Lydia Mikhail
	Address:	1729 W. 17 th Street Santa Ana, CA 92706
	Telephone:	(714) 834-8378
	E-mail:	lmikhail@ochca.com

15. **Precedence:** The Contract documents consist of this Contract and its exhibits and attachments. In the event of a conflict between or among the Contract documents, the order of precedence shall be the provisions of the main body of this Contract, i.e., those provisions set forth in the recitals and articles of this Contract, and then the exhibits and attachments.
16. **Termination – Orderly:** After receipt of a termination notice from the County of Orange, the Contractor may submit to the County a termination claim, if applicable. Such claim shall be submitted promptly, but in no event later than 60 days from the effective date of the termination, unless one or more extensions in writing are granted by the County upon written request of the Contractor. Upon termination County agrees to pay the Contractor for all services performed prior to termination which meet the requirements of the Contract, provided, however, that such compensation combined with previously paid compensation shall not exceed the total compensation set forth in the Contract. Upon termination or other expiration of this Contract, each party shall promptly return to the other party all papers, materials, and other properties of the other held by each for purposes of performance of the Contract.
17. **Usage: Deleted.**
18. **Contractor Screening:** Throughout the term of this Contract, Contractor shall not be listed on any state or federal exclusionary rosters, listed below. County may screen Contractor on a monthly basis to ensure Contractor is not listed on the exclusionary rosters, listed below. If Contractor or its employee(s) are found to be included on any of the rosters indicated below, Contractor shall be deemed in default of its obligation under

this Paragraph and shall constitute a cause for County to exercise its right to terminate this Contract immediately. County, in its sole discretion, may afford Contractor an opportunity to cure said default within a reasonable time.

- a. United States Department of Health and Human Services, Office of Inspector General (OIG) List of Excluded Individuals & Entities (LEIE) (<http://exclusions.oig.hhs.gov>).
 - b. General Services Administration (GSA) System for Award Management (SAM) Excluded Parties List (<http://sam.gov>).
 - c. State of California Department of Health Care Services Medi-Cal Suspended and Ineligible Provider List (County Health Care Agency Internal Database).
19. **Debarment:** To the extent applicable, Contractor shall certify in writing that neither Contractor nor its employee(s) are presently debarred, proposed for debarment, declared ineligible or voluntarily excluded from participation in a contractual transaction by any state or federal department or agency. Where Contractor is unable to certify to any of the statements in the written certification, Contractor must include a written explanation thereon for the County to consider. County shall have the right to refuse to enter into this Contract with the Contractor, or terminate this Contract if already entered into, if Contractor either fails to certify or certifies that it is subject of any debarment, pending debarment, declared ineligibility or voluntary exclusion from participation by any state or federal department or agency.
 20. **Lobbying:** On the best information and belief, Contractor certifies no federal appropriated funds have been paid or will be paid by, or on behalf of, the Contractor to any person influencing or attempting to influence an officer or employee of Congress; or an employee of a member of Congress in connection with the awarding of any federal contract, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative contract.
 21. **California Public Records Act:** Contractor and County agree and acknowledge that all information and documents related to the award and performance of this Contract are subject to disclosure pursuant to the California Public Records Act, California Government Code Section 6250 et seq.
 22. **Gratuities:** The Contractor warrants that no gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County with a view toward securing the Contract or securing favorable treatment with respect to any determinations concerning the performance of the Contract. For breach or violation of this warranty, the County shall have the right to terminate the Contract, either in whole or in part, and any loss or damage sustained by the County in procuring on the open market any goods or services which the Contractor agreed to supply shall be borne and paid for by the Contractor. The rights and remedies of the County provided in the clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under the Contract.
 23. **Parking for Delivery Services:** The County of Orange will not provide free parking for delivery services.

(Signature Page Follows)

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties have executed this Amendment No. 1. If the company is a corporation, Contractor shall provide two signatures as follows: 1) the first signature must be either the Chairman of the Board, President, or any Vice President; 2) the second signature must be that of the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer. In the alternative, a single corporate signature is acceptable when accompanied by a corporate resolution or by-laws demonstrating the legal authority of the signature to bind the company.

Contractor: Cepheid_____
Print Name_____
Title_____
Signature_____
Date_____
Print Name_____
Title_____
Signature_____
Date

County of Orange, a political subdivision of the State of California

Purchasing Agent/Designee Authorized Signature:

Print Name_____
Deputy Purchasing Agent
Title_____
Signature_____
Date

Approved as to Form
Office of the County Counsel
County of Orange, California

Print Name_____
Title_____
Signature_____
Date

ATTACHMENT A-1**SCOPE OF WORK****ADVANTAGE LEVEL SERVICE AGREEMENT for GeneXpert equipment with Serial Number 839301 INCLUDES:**

1. 24x7 Phone Support
2. Onsite 5x10 hours (8AM - 6PM)
3. Annual Preventative Maintenance Check-up performed by Field Service Engineer
4. Includes Parts, Labor & Travel
5. Software upgrades included
6. 98% Uptime Guarantee

The instrument listed below is herein referred to as "Equipment".

<u>GeneXpert System Configuration</u>	<u>Serial Number</u>	<u>Period of Coverage</u>		<u>Service Plan</u>
		<u>Start Date</u>	<u>End Date</u>	
<u>GXXVI-16</u>	<u>839301</u>	<u>8/1/23</u>	<u>7/31/26</u>	<u>GX16A1Y</u>

<u>Plan</u>	<u>Onsite Coverage</u>	<u>Key Deliverables</u>	<u>Uptime Guarantee</u>
<u>Advantage</u>	<ul style="list-style-type: none"> <u>• 5 days per week</u> <u>• 8am to 5pm (local time)</u> 	<u>FSE On-Site Annual Preventative Maintenance includes:</u> <ul style="list-style-type: none"> <u>• Annual on-site service visit by trained field service engineer (FSE) to conduct Preventative Maintenance (PM), including:</u> <u>• Replace worn module ejectors</u> <u>• Lubricate moving parts</u> <u>• Replace fan filters</u> <u>• Brush clean module optics</u> <u>• Replace automation batteries (if necessary)</u> <u>• Xpert Check</u> 	<u>98%</u>

Tech Support, maintenance and repair for covered GeneXpert systems will be prioritized over customers without a service plan.

Cepheid will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert system repair incurred during the duration of this contract.

Routine parts replacement includes any device associated with the system, except for parts provided in calibration kits or consumable items such as printer cartridges or other supplies identified in the Operator's Manual.

Telephone technical support is included according to Section 8 of Attachment C, Cepheid Terms and Conditions.

Service visits exclude holidays recognized by Cepheid (list available upon request).

Customer is entitled to any and all GeneXpert system updates (bug fixes, etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge.

Any upgrades to hardware or third party software are not covered.

No material adjustments made to the Scope of Work will be authorized without prior written approval of the County. Non-material adjustments may be made with the written approval of the County assigned Deputy Purchasing Agent.

ATTACHMENT A – SCOPE OF WORK

ADVANTAGE LEVEL SERVICE AGREEMENT for GeneXpert equipment with Serial Number 839301 INCLUDES:

1. ~~24x7 Phone Support~~
2. ~~Onsite 5x10 hours (8AM – 6PM)~~
3. ~~Annual Preventative Maintenance Check-up performed by Field Service Engineer~~
4. ~~Includes Parts, Labor & Travel~~
5. ~~Software upgrades included~~
6. ~~98% Uptime Guarantee~~

The instrument listed below is herein referred to as “Equipment”.

GeneXpert System Configuration	Serial Number	Period of Coverage		Service Plan
		Start Date	End Date	
GXXVI-16	839301	8/1/21	7/31/23	GX16A1Y

Plan	Onsite Coverage	Key Deliverables	Uptime Guarantee
Advantage	<ul style="list-style-type: none"> • 5 days per week • 8am to 6pm (local time) 	<p>FSE On-Site Annual Preventative Maintenance includes:</p> <ul style="list-style-type: none"> • Annual on-site service visit by trained field service engineer (FSE) to conduct Preventative Maintenance (PM), including: • Replace worn module ejectors • Lubricate moving parts • Replace fan filters • Brush clean module optics • Replace automation batteries (if necessary) • Xpert Check 	98%

~~Tech Support, maintenance and repair for covered GeneXpert systems will be prioritized over customers without a service plan.~~

~~Cepheid will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert system repair incurred during the duration of this contract.~~

~~Routine parts replacement includes any device associated with the system, except for parts provided in calibration kits or consumable items such as printer cartridges or other supplies identified in the Operator's Manual.~~

~~Telephone technical support is included according to Section 8 of Attachment C, Cepheid Terms and Conditions.~~

~~Service visits exclude holidays recognized by Cepheid (list available upon request).~~

~~Customer is entitled to any and all GeneXpert system updates (bug fixes, etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge.~~

~~Any upgrades to hardware or third party software are not covered.~~

~~**No material adjustments made to the Scope of Work will be authorized without prior written approval of the County. Non-material adjustments may be made with the written approval of the County assigned Deputy Purchasing Agent.**~~

ATTACHMENT B-1

COMPENSATION, PRICING, PAYMENT AND INVOICING

1. **Compensation:** This is a fixed price Contract not to exceed the amount of **\$59,385.00** for the Term of Contract, August 1, 2023 to July 31, 2026.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Attachment A, Scope of Work.

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

<u>Year</u>	<u>Dates</u>	<u>Cost</u>
<u>3</u>	<u>8/1/23 – 7/31/24</u>	<u>\$19,795.00</u>
<u>4</u>	<u>8/1/24 – 7/31/25</u>	<u>\$19,795.00</u>
<u>5</u>	<u>8/1/25 – 7/31/26</u>	<u>\$19,795.00</u>

3. **Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.
4. **Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are comparable to the prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.
5. **Payment Terms:** Vendor shall reference Contract number **MA-042-21011532** on invoice. Payment will be **annually in advance** net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.

Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

6. **Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.
7. **Payment – Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:
- a. Contractor's name, address, remittance address
 - b. Contractor's Taxpayer ID Number
 - c. Name of County Agency/Department – **Health Care Agency**
 - d. Delivery/service address: **1729 W. 17th Street, Santa Ana, CA 92706**
 - e. Contract number – **MA-042-21011532**
 - f. Date of invoice
 - g. Product/service description, quantity, and prices
 - h. Sales tax, if applicable
 - i. Freight/delivery charges, if applicable
 - j. Total

The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.

Invoice and support documentation shall be forwarded to the County Health Care Agency's Accounts Payable electronic email address: hcaap@ochca.com

8. **Payment (Electronic Funds Transfer):** County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.

ATTACHMENT B

COMPENSATION, PRICING, PAYMENT AND INVOICING

1. **Compensation:** This is a fixed price Contract not to exceed the amount of **\$36,278.50** for the Term of Contract.

The Contractor agrees to accept the specified compensation as set forth in this Contract as full payment for performing all services and furnishing all staffing and materials required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by the Contractor of all its duties and obligations hereunder. The Contractor shall only be compensated as set forth herein for work performed in accordance with the Attachment A, Scope of Work.

2. **Fees and Charges:** County will pay the following fees in accordance with the provisions of this Contract. Payment shall be as follows:

Year	Dates	Cost
1	8/1/21—7/31/22	\$18,139.25
2	8/1/22—7/31/23	\$18,139.25

3. ~~**Price Increase/Decreases:** No price increases will be permitted during the first period of the Contract. The County requires documented proof of cost increases on Contracts prior to any price adjustment. A minimum of 30-days advance notice in writing is required to secure such adjustment. No retroactive price adjustments will be considered. All price decreases will automatically be extended to the County of Orange. The County may enforce, negotiate, or cancel escalating price Contracts or take any other action it deems appropriate, as it sees fit. The net dollar amount of profit will remain firm during the period of the Contract. Adjustments increasing the Contractor's profit will not be allowed.~~

4. ~~**Firm Discount and Pricing Structure:** Contractor guarantees that prices quoted are comparable to the prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. Contractor agrees that no price increases shall be passed along to the County during the term of this Contract not otherwise specified and provided for within this Contract.~~

5. ~~**Payment Terms:** Vendor shall reference Contract number **MA-042-21011532** on invoice. Payment will be **annually in advance** net 30 days after receipt of an invoice in a format acceptable to the County of Orange and verified and approved by the agency/department and subject to routine processing requirements. The responsibility for providing an acceptable invoice rests with the Contractor.~~

~~Billing shall cover services and/or goods not previously invoiced. The Contractor shall reimburse the County of Orange for any monies paid to the Contractor for goods or services not provided or when goods or services do not meet the Contract requirements.~~

~~Payments made by the County shall not preclude the right of the County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.~~

6. ~~**Taxpayer ID Number:** The Contractor shall include its taxpayer ID number on all invoices submitted to the County for payment to ensure compliance with IRS requirements and to expedite payment processing.~~

7. ~~**Payment — Invoicing Instructions:** The Contractor will provide an invoice on the Contractor's letterhead for goods delivered and/or services rendered. In the case of goods, the Contractor will leave an invoice with each delivery. Each invoice will have a number and will include the following information:~~

- a. ~~Contractor's name, address, remittance address~~
- a. ~~Contractor's Taxpayer ID Number~~
- b. ~~Name of County Agency/Department — **Health Care Agency**~~
- c. ~~Delivery/service address: **1729 W. 17th Street, Santa Ana, CA 92706**~~
- d. ~~Contract number — **MA-042-21011532**~~
- e. ~~Date of invoice~~
- f. ~~Product/service description, quantity, and prices~~
- g. ~~Sales tax, if applicable~~
- h. ~~Freight/delivery charges, if applicable~~
- i. ~~Total~~

~~The responsibility for providing acceptable invoices to County for payment rests with Contractor. Incomplete or incorrect invoices are not acceptable and shall be returned to Contractor.~~

~~Invoice and support documentation shall be forwarded to the County Health Care Agency's Accounts Payable electronic email address: hcaap@ochca.com~~

- ~~8. **Payment (Electronic Funds Transfer):** County offers Contractor the option of receiving payment directly to its bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT shall also receive an Electronic Remittance Advice with the payment details via e-mail. An e-mail address shall need to be provided to County via an EFT Authorization Form. Contractor may request a form from the agency/department representative listed in the Contract.~~

ATTACHMENT C

CEPHEID TERMS AND CONDITIONS

1. This Agreement entitles Customer to preferential consideration for scheduling service for GeneXpert and GeneXpert Infinity systems over service requests from customers who are not covered by a service agreement. As a condition of receiving the Services described herein, Customer shall make reasonable efforts to provide Cepheid with secure internet access to the GeneXpert system(s) to assess the need for repair, provide calibration, and provide software updates. If Customer elects not to provide such access, Cepheid may withhold service or charge Customer for any additional costs incurred by Cepheid that would have been avoided had internet access been provided.
2. All system repairs under this Agreement will be performed by Cepheid and/or a third party service provider approved by Cepheid.
3. Uptime Guarantee and definition of Downtime
Cepheid offers uptime guarantees with the Advantage and Advantage Plus programs. The uptime guarantee is 98%.

For any calendar quarter during the service agreement Cepheid guarantees that any GeneXpert system covered by this Agreement will maintain the quoted uptime. The uptime will be calculated using the following formula: $\text{Uptime} = ((T - \text{TNF}) \times 100) / T$

where T is the total number of hours that the system is typically used per quarter (determined by multiplying the number of hours per day that the system is typically in use by 13 weeks in a quarter) and TNF is the number of hours that the system was unable to run tests during time T. If the system is unable to run tests, the system will be considered down. Downtime scheduled for preventative maintenance or any other scheduled event, including downtime scheduled by the customer, will not be included in the calculation of TNF.

Customer will calculate uptime after each calendar quarter. If uptime is less than the guaranteed value, the customer will be compensated an additional week of coverage for a maximum of 1 week per calendar quarter.

4. At Cepheid's sole discretion, parts may be either repaired or replaced with new or reconditioned parts from an Authorized Cepheid Service Center. Parts for which replacements have been provided by Cepheid shall, at Cepheid's option, become the property of Cepheid. Cepheid reserves the right to determine conclusively what repairs are performed on the system.
5. GeneXpert systems or components thereof must not be returned to Cepheid without prior arrangement with Cepheid. Cepheid Service will issue a Return Material Authorization (RMA) number, which must be obtained prior to shipping any item to Cepheid. If a system needs to be returned to Cepheid for repair, Cepheid will offer a loaner system free of charge.
6. Prior to the arrival of a Cepheid Service Representative or shipment of a system or component thereof to the Cepheid Service Center, Customer must ensure that the system is safe to handle according to Cepheid's procedures described in the applicable Operator Manual. Customer must inform Cepheid of any hazards which may be encountered by Cepheid during the service visit. Customer must provide a completed "Clearance Certificate" from Cepheid with any item shipped to Cepheid. The Clearance Certificate must list all potential biohazards that have been analyzed on the system or to which the system has been exposed.

7. Customer must not attempt to repair or remove parts during the duration of this Agreement without prior written approval from Cepheid. Any such attempt may invalidate this Agreement and/or result in additional Time and Material charges to Customer.
8. Cepheid will provide telephone technical support through its Technical Support Call Center. Technical Support personnel are available 24hrs per day 7 days per week. 1-888-838-3222. Holiday coverage is from 10:00 am - 6:00 pm (EST) for January 1st, the 4th Thursday in November, and December 25th.
9. Cepheid will use reasonable efforts to schedule a visit to occur within 2 business days after Technical Support determines the need for on-site service. Advantage Plus Customers, will be prioritized for service on the next available day from Technical Support determining the need for on-site service.
10. This Agreement covers only defects arising from normal usage and does not cover malfunctions or failures resulting from: operation in an unsuitable environment, use of the system for purposes other than that for which it was designed, unauthorized attachments, acts of nature, unusual physical or electrical stress, modifications or repairs done by other than a Cepheid or Cepheid-authorized service provider, or misuse, abuse or neglect of the system.
11. If this Agreement is entered into after expiration of the original system warranty or expiration or termination of a previous Service Agreement, Cepheid may require a re-instatement inspection before any system(s) can be placed under this Agreement. Cepheid reserves the right to refuse acceptance of this Agreement for any system which, in Cepheid's opinion, has not been properly maintained. Cepheid's acceptance of this Agreement may be further contingent upon the completion of repairs or maintenance as required by such inspection. Customer shall pay any re-instatement inspection fee, and the cost of any repairs or maintenance required to bring the system to a level of operation acceptable to Cepheid, as a condition of receiving any benefits under this Agreement.
12. All repair work completed by Cepheid's Service Representatives is warranted to have been performed in accordance with industry standards for the greater of 90 days or for the duration of this Agreement. All replacement parts used by Cepheid are warranted to be free from defects in workmanship.
13. Except as stated in the immediately preceding paragraph above, Cepheid disclaims all warranties, express or implied, including the implied warranties of merchantability and fitness for a particular purpose.
14. If Cepheid does not perform the services provided for in this Agreement, Customer's sole remedy shall be return of any fees or charges paid by Customer in connection with this Agreement.
15. Cepheid shall not be liable for any incidental or consequential damages (including lost profits) for breach of any of its obligations under this Agreement, including breach of warranty. Cepheid's total liability under this Agreement shall not exceed the total payments made by Customer to Cepheid under this Agreement.
16. Service under this Agreement shall not be transferable and shall be binding on the Parties hereto, their successors and assigns.