

Fiscal Review Committee Redaction Cover Sheet

Contract Number: Cepheid_TDH_March2019

No redactions required
 Redactions applied

Contractor/Service Provider Identity *(this includes addresses, phone numbers, service provider contact or officer information, and other information that could be used to identify the contractor or service provider)*

 Federal Employee Identification Number (FEIN)
 Contractor/Vendor Name

Purpose for Contractor/Vendor Name Redaction (if applicable)

Technology Details *(this includes database, operating system, development code, and any other information that would identify an area of weakness or an attack vector)*

 Product Name
 Associated Technology
 Other

Other Description: _____



STATE OF TENNESSEE
DEPARTMENT OF HEALTH
ANDREW JOHNSON TOWER, 5TH FLOOR
710 JAMES ROBERTSON PARKWAY
NASHVILLE, TENNESSEE 37243

LISA PIERCEY, MD, MBA, FAAP
COMMISSIONER

BILL LEE
GOVERNOR

March 13, 2019

Krista Lee, Chairman
Fiscal Review Committee
Rachel Jackson Building
320 Sixth Avenue North
Nashville, TN 37243

and

Mr. Mike Perry, Chief Procurement Office
Department of General Services
Procurement Office
Tennessee Tower, 3rd Floor
Nashville, TN 37243

Dear Chairman Lee and CPO Perry:

The Department of Health, Laboratory Services is requesting sole source approval to establish a multi-year, 3 years with 2 options, contract for the purchase of reagent kits, supplies and maintenance service agreements for laboratory testing. The testing will be for mycobacterium tuberculosis and carbapenem resistant bacteria clinical samples. Both polymerase chain reaction (PCR) tests have the ability to identify drug-susceptible bacterial infections. Laboratory Services performs this testing for CDC's Antimicrobial Resistance Lab Network (ARLN) and tuberculosis (TB) grant obligations. ARLN's Carbapenem-resistant enterobacteriaceae (CRS)/Carbapenem resistant organisms (CRO) testing consists of samples from those hospitalized, in nursing homes, and other healthcare settings; amongst others, these patients face a higher chance of death due to the drug resistance. Tuberculosis testing is performed for the Local Health Departments for suspected tuberculosis patients for rapid identification and treatment intervention. Testing is also performed to determine if patients can be released from respiratory isolation.

The ability to identify these infectious diseases is critical to maintaining public health and rapid identification of outbreaks of communicable diseases. This can only be accomplished by using validated procedures and test reagents. Cepheid is the only company that manufactures the GeneXpert cartridges for rapid detection of carbapenem resistance mechanisms and tuberculosis DNA and resistance mechanisms. This methodology is recommended in CDC standard operating procedures for on-demand molecular diagnostics and current instrumentation cannot support any other product. Without these supplies the State will be unable to meet the required workflow of the CDC and Federal Grant obligations. This testing was developed and validated using Cepheid reagents, and these reagents are required for compatibility with existing equipment. Federal and state regulations require the test protocols be validated prior to implementation and must be validated with appropriate reagents that do not change. This contract is needed to assure consistent reagents for the validated procedures. The total cost of a 3 year contract will be \$900,000; total cost of this contract with 3 years and 2 options will be \$1,500,000. 100% federal funded.

We appreciate your approval to proceed with this contract and thank you for your consideration

Sincerely,

A handwritten signature in blue ink that reads "Lisa Piercey".

Lisa Piercey, MD, MBA, FAAP
Commissioner

Supplemental Documentation Required for
Fiscal Review Committee

*Contact Name:	Richard Steece Paula Gibbs	*Contact Phone:	615-262-6300 615-262-6364		
*Presenter's name(s):	Richard Steece Paula Gibbs				
Edison Contract Number: <i>(if applicable)</i>		RFS Number: <i>(if applicable)</i>			
*Original or Proposed Contract Begin Date:	07/01/19	*Current or Proposed End Date:	06/30/24		
Current Request Amendment Number: <i>(if applicable)</i>					
Proposed Amendment Effective Date: <i>(if applicable)</i>					
*Department Submitting:	Department of Health				
*Division:	Laboratory Services				
*Date Submitted:	03/13/19				
*Submitted Within Sixty (60) days:	Yes				
<i>If not, explain:</i>					
*Contract Vendor Name:	Cepheid				
*Current or Proposed Maximum Liability:	\$1,500,000.00				
*Estimated Total Spend for Commodities:	\$1,500,000.00				
*Current or Proposed Contract Allocation by Fiscal Year: (as Shown on Most Current Fully Executed Contract Summary Sheet)					
FY:20	FY:21	FY:22	FY:23	FY:24	FY
\$300,000.00	\$300,000.00	\$300,000.00	\$300,000.00	\$300,000.00	\$
*Current Total Expenditures by Fiscal Year of Contract: (attach backup documentation from Edison)					
FY:	FY:	FY:	FY:	FY	FY
\$	\$	\$	\$	\$	\$
IF Contract Allocation has been greater than Contract Expenditures, please give the reasons and explain where surplus funds were spent:			N/A		
IF surplus funds have been carried forward, please give the reasons and provide the authority for the carry forward provision:			N/A		
IF Contract Expenditures exceeded Contract Allocation, please give the reasons and explain how funding was acquired to pay the overage:			N/A		

Supplemental Documentation Required for
Fiscal Review Committee

*Contract Funding Source/Amount:			
State:		Federal:	100%
<i>Interdepartmental:</i>		<i>Other:</i>	
If “ <i>other</i> ” please define:			
If “ <i>interdepartmental</i> ” please define:			
Dates of All Previous Amendments or Revisions: <i>(if applicable)</i>		Brief Description of Actions in Previous Amendments or Revisions: <i>(if applicable)</i>	
Method of Original Award: <i>(if applicable)</i>			
*What were the projected costs of the service for the entire term of the contract prior to contract award? How was this cost determined?		\$900,000 for the first 3 years, \$1,500,000 for total of 3 years with 2 options. The cost was determined by usage and vendor quotation	
*List number of other potential vendors who could provide this good or service; efforts to identify other competitive procurement alternatives; and the reason(s) a sole-source contract is in the best interest of the State.		There are no other vendors who can provide reagents to meet CDC and laboratory protocols established for the testing of the samples. Samples are run on state owned instruments and must be compatible to ensure continuity.	

Special Contract Request

This form should be utilized to facilitate contract and procurement requests that require the Chief Procurement Officer's prior approval and that of the Comptroller of the Treasury, as applicable.

NOT required for a contract with a federal, Tennessee, or Tennessee local government entity or a grant.

Route a completed request, as one file in PDF format, via e-mail attachment sent to: agsprs.agsprs@tn.gov.

APPROVED	APPROVED
CHIEF PROCUREMENT OFFICER	COMPTROLLER OF THE TREASURY
DATE	DATE

Request Tracking #	HL00018340 HL00017965
1. Contracting Agency	Department of Health, Division of Laboratory Services
2. Type of Contract or Procurement Method	<input type="checkbox"/> No Cost <input type="checkbox"/> Revenue <input checked="" type="checkbox"/> Sole Source <input type="checkbox"/> Proprietary <input type="checkbox"/> Competitive Negotiation <input type="checkbox"/> Other _____
3. Requestor Contact Information	Dorothy Baynham 615-262-6366 Dorothy.baynham@tn.gov
4. Brief Goods or Services Caption	GXCARBAR-10, GXMTB/RIF-US-10 test kits, Xpert Check Calibration kits, and service agreement for GeneXpert systems.
5. Description of the Goods or Services to be Acquired	Cepheid closed cartridge Polymerase Chain reaction (PCR) test kits for the rapid detection of tuberculosis and antibiotic resistant bacteria. Also a service agreement for the GeneXpert systems that use said kits.
6. Proposed Contractor	Cepheid, Inc.

Request Tracking #	HL00018340 HL00017965
7. Name & Address of the Contractor's principal owner(s) – NOT required for a TN state education institution	Clay Anderson Cepheid US 904 Caribbean Dr Sunnyvale CA 94089 865-255-2213 Clay.Anderson@cepheid.com
8. Proposed Contract Period – with ALL options to extend exercised <i>The proposed contract start date shall follow the approval date of this request.</i>	36 months with 2 options to renew
9. Strategic Technology Solutions (“STS”) Pre-Approval Endorsement Request – information technology (N/A to THDA)	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached Instruments being serviced are not connected to any state server.
10. eHealth Pre-Approval Endorsement Request – health-related professional, pharmaceutical, laboratory, or imaging	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
11. Human Resources Pre-Approval Endorsement Request – contracts with an individual, state employee training, or services related to the employment of current or prospective state employees	<input checked="" type="checkbox"/> Not Applicable <input type="checkbox"/> Attached
12. Are these goods or services currently available on a statewide contract? If YES, please explain why the current statewide contract is not being used for this procurement.	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
13. Maximum Contract Cost – with ALL options to extend exercised	\$ 1,500,000.00
14. Was there an initial government estimate? If so, what amount?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES,
15. Cost Determination Used - How did agency arrive at the estimate of expected costs?	A study of test volumes and a vendor quote
16. Explanation of Fair and Reasonable Price - Explain how agency determined that price is fair and reasonable	Cepheid is the only CDC recommended company that offers the instrument maintenance and supplies for the required Antimicrobial Resistance Lab Network (ARLN) testing on the existing instruments owned by the lab.
17. Documentation of Discussions with Contractor - How did agency document discussions with Contractor? Attach documentation to this request as applicable.	Primarily email

Request Tracking #	HL00018340 HL00017965
18. Explanation of Need for or requirement placed on the State to acquire the goods or services	The kits are needed so that vital tests can be carried out in the Antimicrobial Resistance Lab Network (ARLN) in order to test for antibiotic resistant diseases for the CDC's seven-state Southeast region. They are also needed to test for Tuberculosis. The instrument service is required so that the existing equipment we have is maintained and our ability to perform these tests is protected. These instruments and kits meet the grant and CDC requirements.
19. Proposed contract impact on current State operations	To meet CDC and grant requirements to test for antibiotic resistant disease and tuberculosis.
20. Justification – Specifically explain why the goods or services should be acquired through the procurement method or contract type selected.	Lab Services has two GeneXpert systems. One is for the use of the ARLN, which studies the resistance to antibiotics in diseases. The other GeneXpert is used by the Special Microbiology section and tests for Tuberculosis. Compatibility of existing equipment is at issue, as these tests can only be performed on our existing GeneXpert instruments. The GeneXpert is the only instrument that is recommended in CDC standard operating procedures for on-demand ARLN diagnostics.
For No Cost and Revenue Contracts Only	
21. What costs will the State incur as a result of this contract? If any, please explain.	
22. What is the total estimated revenue that the State would receive as a result of this contract?	
23. Could the State also contract with other parties interested in entering substantially the same agreement? Please explain.	<input type="checkbox"/> NO <input type="checkbox"/> YES
24. Summary of State responsibilities under proposed contract	
For Sole Source and Proprietary Procurements Only	
25. Evidence of Contractor's experience & length of experience providing the goods or services to be procured.	Founded in 1996, Cepheid Inc is an American molecular diagnostics company that develops, manufactures and markets fully integrated systems for testing in the clinical market. The company's systems enable rapid, sophisticated molecular testing for organisms and genetic-based diseases by automating otherwise complex manual laboratory procedures.

Request Tracking #	HL00018340 HL00017965
26. Has the contracting agency procured the subject goods or services before? If yes, provide the method used to purchase the goods or services and the name and address of the contractor.	<input type="checkbox"/> NO <input checked="" type="checkbox"/> YES, Method: Sole Source Name/Address: Cepheid Inc. 904 Caribbean Drive Sunnyvale, CA 94089
27. Contractor selection process and efforts to identify reasonable, competitive, procurement alternatives	Cepheid is the only vendor that offers compatibility with our existing equipment. This GeneXpert is the only instrument that is recommended in CDC standard operating procedures for on-demand ARLN diagnostics.
Signature Required for all Special Contract Requests	
Signature of Agency head or authorized designee, title of signatory, and date (the authorized designee may sign his or her own name if indicated on the Signature Certification and Authorization document)	
<p style="font-size: 24pt; margin: 0;">Lindsay Oliveras</p> <p>Signature: _____</p>	<p>Digitally signed by Lindsay Oliveras DN: cn=Lindsay Oliveras, o=TN Dept. of Health, ou, email=lindsay.r.oliveras@tn.gov, c=US Date: 2019.03.12 13:08:16 -05'00' Date: _____</p>



Invitation to Bid (ITB)

For 34301 Cepheid Reagent Test Kits and Maintenance Services
Event # xxxxx

1. Section 1 -- Background Information

- 1.1. To establish a multi-year contract with Cepheid for Reagent Test Kits and a Maintenance Service Agreement for two GeneXpert machines that utilize these Reagent kits.
- 1.2. **Accommodation for People with Disabilities.** Any individuals with disabilities who wish to participate in public meetings such as a scheduled pre-response conference or other scheduled function should contact the Solicitation Coordinator to discuss any auxiliary aids or services needed. Such contact should be made no less than three (3) business days prior to the public meeting to allow time for the Solicitation Coordinator to provide needed aids or services.
- 1.3. **Questions.** Respondents may submit written questions about this ITB to the Solicitation Coordinator. All questions must be submitted no later than .
- 1.4. **Responses Due.** The response must be received by the State on or before the date and hour designated for the response opening. Responses that are submitted untimely shall be rejected.

2. Section 2 -- Award Criteria

- 2.1. **Single Award -- Lowest Cost.** A single contract will be awarded for all line items to the respondent whose response meets the requirements and criteria set forth in this ITB at the lowest cost.

3. Section 3 -- Standard Terms of the Solicitation

- 3.1. **Respondent Registration.** Pursuant to Tenn. Code Ann. § 4-56-105 all respondents must be registered prior to the issuance of a contract or a purchase order. Respondents can register online at the State of Tennessee Supplier Portal:

- 3.2. **Respondent's Ability to Perform.** The State shall have the right to require evidence of the respondent's ability to perform the services or deliver the goods required pursuant to the terms and conditions of this ITB.
- 3.3. **Quality of Workmanship and Materials.** Unit price responses are requested on goods or services that equal or exceed the specifications, unless the specifications limit the dimensions, brands, or model of goods or services. The absence of detailed specifications or the omission of detailed descriptions shall mean that only the best commercial practices and only first quality goods and workmanship shall be supplied.
- 3.4. **Performance.** The respondent who is awarded a contract will be responsible for delivering the goods or providing the services set out in this ITB. All goods or services are subject to inspection and evaluation by the State.
- 3.5. **Clarifications.** The State reserves the right to conduct clarifications or negotiations with one or more respondents. All communications, clarifications, and negotiations shall be conducted in a manner that is fair and transparent.
- 3.6. **Negotiations.** The State may elect to negotiate by requesting revised Cost Proposals from apparently responsive and responsible respondents. However, the State reserves the right to award a contract on the basis of initial responses received. Therefore, each response should contain the respondent's best terms from a price and technical standpoint. The State reserves the right to conduct multiple negotiation rounds. If the State exercises its right to enter into negotiations, it may identify areas of a response that may require further clarification or areas in which it is apparent that there may have been miscommunications or misunderstandings as to the State's specifications or requirements. The State may seek to clarify those identified issues during negotiations. All responsive respondents will be given equivalent information with respect to cost negotiations. All cost negotiations will be documented for the procurement file. Additionally, the State may conduct target pricing and other price or service level negotiations. Target pricing may be based on considerations such as current pricing, market considerations, benchmarks, budget availability, or other method that does not reveal individual respondent pricing. During target price negotiations respondents are not obligated to meet or beat target prices, but will not be allowed to increase prices. All communications, clarifications and negotiations shall be conducted in a manner that supports fairness in response improvement. Note that each clarification sought by the State may be unique to an individual respondent.
- 3.7. **Response Cancellation and Rejection.** The State may cancel this ITB in its entirety and reissue it in whole or in part.

The State may reject any or all responses in its sole discretion. Additionally, the State may reject a response that: (a) qualifies the offer to provide goods or services as required by this ITB; (b) proposes alternative goods or services unless expressly requested by this ITB; (c) involves collusion, consultation, communication, or agreement among respondents; (d) includes information the respondent knew or should have known was materially incorrect; or (e) does not comply with the terms, conditions, specifications, or performance requirements of this ITB.

After the State opens the responses, no price changes shall be permitted except pursuant to target pricing or best and final offer negotiations as specified in this ITB.

- 3.8. **Communications and Contacts.** Prospective respondents must direct communications concerning this ITB to the following person designated as the Solicitation Coordinator:

Tara Roark
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville TN 37243-1102
615-532-1837
Tara.Roark@tn.gov

Unauthorized contact about this ITB with employees or officials of the State of Tennessee except as detailed in this ITB may result in disqualification from consideration under this procurement process. Notwithstanding the foregoing, respondents may alternatively contact:

Staff of the Governor's Office of Diversity Business Enterprise for assistance available to minority-owned, woman-owned, service-disabled veteran owned, businesses owned by persons with disabilities and small businesses as well as general, public information relating to this ITB (visit <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/godbe-general-contacts.html> for contact information); and

The following individual designated by the State to coordinate compliance with the nondiscrimination requirements of the State of Tennessee, Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act, and associated federal regulations:

Helen Crowley
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102
615-741-1035
Helen.Crowley@tn.gov

- 3.9. **Responses Submitted by Mail.** If submitting a response by mail: (1) all prices must be typed or written in ink on the "Line Details" portion of this ITB; (2) any corrections, erasures, or other alterations to prices must be initialed by the respondent; and (3) the response shall be manually signed by the respondent in ink. Each individual response must be returned in a separate envelope package or container and must be properly labeled on the outside referencing the applicable event number and the response opening date. Responses should be mailed in a properly labeled sealed envelope to the following address:

Bidder Services
Department of General Services, CPO
312 Rosa L Parks Avenue, 3rd Floor Tennessee Tower
Nashville, TN 37243-1102.

Failure to comply with these requirements may result in rejection of the response.

- 3.10. **Models Included in Response.** All goods identified in the response must be new, of current manufacturer production, and must have been formally announced by the manufacturer or provider of services as being commercially available as of the date of response opening. Goods may include internal refurbished or reconditioned components normally used in the manufacturing process and deemed and warranted and sold as new equipment by the manufacturer.
- 3.11. **Respondent Certification.** By signing or electronically submitting the response, the respondent agrees to the terms and conditions of this ITB and certifies that all goods or services included in the response meet or exceed the Scope or Specifications of this ITB. The respondent agrees that, if it is awarded a contract, it will deliver goods or services that meet or exceed the specifications in this ITB.
- 3.12. **Exceptions or New Terms or Conditions.** Exceptions to terms and conditions or new terms and conditions proposed by the respondent that vary from this ITB may, in the discretion of the State, render the response nonresponsive. A response deemed nonresponsive will not be considered for an award of a contract.
- 3.13. **Conflict of Interest.** The State shall not consider a response from an individual who is, or within the past six (6) months has been, a State employee. For purposes of this ITB:
- a. An individual shall be deemed a State employee until such time as all compensation for salary, termination pay, and annual leave has been paid;
 - b. A contract with or a response from a company, corporation, or any other contracting entity in which a controlling interest is held by any State employee shall be considered to be a contract with or proposal from the employee; and
 - c. A contract with or a response from a company, corporation, or any other contracting entity that employs an individual who is, or within the past six (6) months has been, a State employee shall not be considered a contract with or a proposal from the employee and shall not constitute a prohibited conflict of interest.
- 3.14. **Specifications Govern.** Brands or model numbers identified in the specifications of this ITB are deemed to meet all written specifications. In the event of a conflict between specified brands and models and the written specifications, the conflict shall be resolved in favor of the written specifications.
- 3.15. **Firm Offer.** The response constitutes a firm offer that is irrevocable for ninety (90) days. An award of a contract shall, subject to necessary State approvals, be binding on the respondent without any further action by the respondent.
- 3.16. **F.O.B. Destination.** Respondent's prices shall include delivery of all items F.O.B. destination or as otherwise specified by the State.

- 3.17. **Tax Exemption.** The State of Tennessee is exempt from local, state, and federal excise taxes. These taxes shall not be included in respondent's prices. The successful respondent shall pay all taxes lawfully imposed on it with respect to any goods or services delivered in accordance with this ITB.
- 3.18. **Prompt Pay Discount.** Any prompt pay discounts offered by respondents shall be extended to all authorized users of the contract.
- 3.19. **Fixed Discount or Surcharge.** The percent discount or surcharge per line item must be fixed for the contract's term.
- 3.20. **On-site Inspection.** All respondents should visit the site to take exact measurements and examine the premises to become familiar with any problems or unusual circumstances. No allowances will be made by the State for errors in quotations due to any respondent not visiting the site prior to submitting their response. Respondents shall be responsible for their own measurements.
- 3.21. **Used Equipment.** When this ITB authorizes offers of used items, no used item is acceptable if serial numbers or any other manufacturer's identifying label or markings have been removed, obliterated, or changed in any way.
- 3.22. **Tennessee Contractor License.** Respondents shall comply with Tenn. Code Ann. § 62-6-119 in providing the specified information within this ITB. Any response that does not comply with Tenn. Code Ann. § 62-6-119 shall be rejected.
- 3.23. **Purchase of Materials for Highways or Roadways.** Respondents must comply with Tenn. Code Ann. § 54-5-135.
- 3.24. **Energy Star Products.** Any goods ordered by the State must be Energy Star certified and meet applicable Energy Star specifications for energy efficiency.
- 3.25. **Safety of Chemical Products.** All respondents awarded a contract must maintain, for all of its chemical products available under this Contract, a Safety Data Sheet ("SDS") on the chemical manufacturer's website. A site operated by or on behalf of the manufacturer or a relevant trade association is acceptable so long as the information is accessible to the public, free of charge.
- 3.26. **Professional Licensure.** All persons, agencies, firms, or other entities that provide legal or financial opinions, which a respondent provides for consideration and evaluation by the State as a part of a response to this ITB, shall be properly licensed to render such opinions. Upon submitting the response, the respondent (and respondent employees and subcontractors, as applicable) must hold all necessary or appropriate business or professional licenses to provide the goods or services as required by the contract. The State may require any respondent to submit evidence of proper licensure.

3.27. **Department of Revenue Registration.** Respondent must be registered with the Tennessee Department of Revenue for the collection of Tennessee sales and use tax. The State shall not award a contract unless the respondent provides proof of such registration or provides documentation from the Department of Revenue that the Contractor is exempt from this registration requirement. The foregoing is a mandatory requirement of an award of a contract pursuant to this ITB. For purposes of this registration requirement, the Department of Revenue may be contacted at: TN.Revenue@tn.gov.

[https://tntap.tn.gov/eservices/ /](https://tntap.tn.gov/eservices/)

3.28. **Prohibition of Illegal Immigrants.** Any respondent awarded a contract shall comply with Tenn. Code Ann. § 12-3-309 and submit semi-annual attestations to the State.

3.29. **Inspection of Procurement File.** All respondents have the right to inspect the procurement file, prior to award, upon completion of the evaluation by the Central Procurement Office. Interested respondents should contact the Solicitation Coordinator following the response opening date or once the file is open for the seven (7) day inspection period. A "Notice of Intent to Award" letter will be sent to all respondents detailing which respondent(s) has been recommended for award and the evaluated award amount(s). Upon request, a reasonable opportunity to inspect the procurement file will be provided to the respondent.

3.30. **Protest by Respondent.** Pursuant to Tenn. Code Ann. § 12-3-514, any actual respondent may protest. Please refer to the Central Procurement Office's website to obtain a copy of the protest procedures and protest bond requirements or contact the sourcing analyst or category specialist at 615-741-1035. The website for the Central Procurement Office is as follows: <https://www.tn.gov/generalservices/procurement.html>. If a written protest and a protest bond are not received by the end of the seven-day period to protest then the Solicitation Coordinator will proceed with the contract award.

GOVERNOR'S OFFICE OF DIVERSITY BUSINESS ENTERPRISE

Efforts to Achieve Diversity Business Participation

The Governor's Office of Diversity Business Enterprise ("Go-DBE") is the State's central point of contact to attract and assist minority-owned, woman-owned, service-disabled veteran-owned, disabled-owned, and small business enterprises interested in competing in the State of Tennessee's procurement and contracting activities. These diversity business enterprises are defined as follows:

Minority Business Enterprise (MBE) and Woman Business Enterprise (WBE)

Businesses that are a continuing, independent, for-profit business which performs a commercially useful function, and is at least fifty-one percent (51%) owned and controlled by one (1) or more individuals in the minority or woman category who were impeded from normal entry into the economic mainstream because of past practices of discrimination based on race, ethnic background, or gender.

Service-Disabled Veteran Business Enterprise (SDVBE)

"Service-disabled veteran-owned business" means a service-disabled veteran-owned business located in the State of Tennessee that satisfies the criteria in Tenn. Code. Ann. § 12-3-1102(8). "Service-disabled veteran" means any person who served honorably in active duty in the armed forces of the United States with at least a twenty percent (20%) disability that is service-connected, i.e., the disability was incurred or aggravated in the line of duty in the active military, naval or air service.

Small Business Enterprise (SBE)

"Small business" means a business that is a continuing, independent, for profit business which performs a commercially useful function with residence in Tennessee and has total gross receipts of no more than ten million dollars (\$10,000,000) averaged over a three-year period or employs no more than ninety-nine (99) persons on a full-time basis.

Disabled Business Enterprise (DSBE)

"Disabled Business Enterprise" means a business owned by a person with a disability that is a continuing, independent, for-profit business that performs a commercially useful function, and is at least fifty-one (51%) owned and controlled by one (1) or more persons with a disability, or, in the case of any publicly-owned business, at least fifty one percent (51%) of the stock of which is owned and controlled by one(1) or more persons with a disability and whose management and daily business operations are under the control of one (1) or more persons with a disability.

For additional program eligibility information, visit:

<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--/program-eligibility.html>

Instructions

As part of this Invitation to Bid, the respondent should complete the Diversity Utilization Plan below. To assist in your effort to seek and solicit the participation of diversity businesses on this solicitation, a directory of certified Diversity Business Enterprise firms may be found on the State's website at:

<https://tn.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?TN=tn&XID=1215>
directory or by calling Go-DBE toll free at 866-894-5026.

RESPONDENT'S DIVERSITY UTILIZATION PLAN

Respondent's Company Name:		
Solicitation Event Name:		Event Number:
Respondent's Contact Name:	Phone: ()	Email:
Does the Respondent qualify as the diversity business enterprise? <input type="checkbox"/> Yes <input type="checkbox"/> No		
If yes, which designation does the Respondent qualify? <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> DSBE <input type="checkbox"/> SDVBE <input type="checkbox"/> SBE		
Certifying Agency:		

Estimated level of participation by DBEs if awarded a contract pursuant to this ITB:

Diversity Business Information (List all subcontractors, joint-ventures, and suppliers)	% of Contract	Estimated Amount	MBE/ WBE/ SDVBE/ SBE / DSBE Designation	Currently Certified (Yes or No)
Business Name:				
Contact Name:				
Contact Phone:				
Business Name:				
Contact Name:				
Contact Phone:				

If awarded a contract pursuant to this ITB, we confirm our commitment to make reasonable business efforts to meet or exceed the commitment to diversity as represented in our Diversity Utilization Plan. We shall assist the State in monitoring our performance of this commitment by providing, as requested, a monthly report of participation in the performance of this Contract by small business enterprises and businesses owned by minorities, women, service-disabled veterans and persons with disabilities. Such reports shall be provided to the state of Tennessee Governor's Office of Diversity Business Enterprise in the TN Diversity Software available online at:

<https://tn.diversitysoftware.com/FrontEnd/StartCertification.asp?TN=tn&XID=9810>

We further agree to request in writing and receive prior approval from the Central Procurement Office for any changes to the use of the above listed diversity businesses.

Authorized Signature: _____

Date:

Printed Name and Title of Signatory _____



4. SCOPE:

- 4.1. **Scope.** The Contractor shall provide all goods or services and deliverables as required, described, and detailed in the Scope or Specifications set forth in the Invitation to Bid and meet all service and delivery timelines as specified by the Invitation to Bid.

4.2. Warranty Clauses:

- 4.2.1. **Warranty.** Contractor represents and warrants that the term of the warranty ("Warranty Period") shall be the greater of the Term of this Contract or any other warranty generally offered by Contractor, its suppliers, or manufacturers to customers of its goods or services. The goods or services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the goods or services to the terms and conditions of this Contract shall constitute a "Defect" and shall be considered "Defective." If Contractor receives notice of a Defect during the Warranty Period, then Contractor shall correct the Defect, at no additional charge. Contractor represents and warrants that the State is authorized to possess and use all equipment, materials, software, and deliverables provided under this Contract.

Contractor represents and warrants that all goods or services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in Contractor's industry.

If Contractor fails to provide the goods or services as warranted, then Contractor will re-provide the goods or services at no additional charge. If Contractor is unable or unwilling to re-provide the goods or services as warranted, then the State shall be entitled to recover the fees paid to Contractor for the Defective goods or services. Any exercise of the State's rights under this Section shall not prejudice the State's rights to seek any other remedies available under this Contract or applicable law.

- 4.3. **Inspection and Acceptance.** The State shall have the right to inspect all goods or services provided by Contractor under this Contract. If, upon inspection, the State determines that the goods or services are Defective, the State shall notify Contractor, and Contractor shall re-deliver the goods or provide the services at no additional cost to the State. If after a period of thirty (30) days following delivery of goods or performance of services the State does not provide a notice of any Defects, the goods or services shall be deemed to have been accepted by the State.

5. TERM OF CONTRACT:

5.1. **Term of Contract.**

- 5.1.1. This Contract shall be effective on July 01, 2019 ("Effective Date") and extend for a period of thirty-six (36) months after the Effective Date ("Term"). The State shall have no obligation for goods or services provided by the Contractor prior to the Effective Date. In no event, however, shall the maximum Term, including all renewals or extensions, exceed a total of sixty (60) months.
- 5.1.2. **Renewal Options.** This Contract may be renewed upon satisfactory completion of the Term. The State reserves the right to execute up to two (2) renewal options under the same terms and conditions for a period not to exceed twelve (12) months each by the State, at the State's sole option.
- 5.1.3. **Term Extension.** The State may extend the Term an additional period of time, not to exceed one hundred-eighty (180) days beyond the expiration date of this Contract, under the same terms and conditions, at the State's sole option.

6. PAYMENT TERMS AND CONDITIONS:

- 6.1. **Maximum Liability.** In no event shall the maximum liability of the State under this Contract exceed one-million, five-hundred thousand (\$1,500,000.00) ("Maximum Liability"). This Contract does not grant the Contractor any exclusive rights. The State does not guarantee that it will buy any minimum quantity of goods or services under this Contract. Subject to the terms and conditions of this Contract, the Contractor will only be paid for goods or services provided under this Contract after a purchase order is issued to Contractor by the State or as otherwise specified by this Contract.
- 6.2. **Compensation Firm.** The prices identified in this Contract, whether derived from an awarded published catalog, price list, price schedule, or other mutually agreed upon source shall constitute the entire compensation due the Contractor for all goods or services provided under this Contract regardless of the difficulty, materials or equipment required. The prices identified includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Contractor.
- 6.3. **Travel Compensation.** The Contractor shall not be compensated or reimbursed for travel time, travel expenses, meals, or lodging.
- 6.4. **Invoice Requirements.** The Contractor shall invoice the State only for goods delivered and accepted by the State or services satisfactorily provided at the amounts stipulated in this Contract. Contractor shall submit invoices and necessary supporting documentation to the State Agency that requested goods or services no later than thirty (30) days after goods or services have been provided.
- a) Each invoice, on Contractor's letterhead, shall clearly and accurately detail all of the following information (calculations must be extended and totaled correctly):
1. Invoice number (assigned by the Contractor);
 2. Invoice date;

3. Contract number (assigned by the State);
4. Purchase order number (assigned by the State);
5. Customer account name: The State of Tennessee;
6. Customer account number (assigned by the Contractor to the above-referenced Customer);
7. Contractor name;
8. Contractor Tennessee Edison supplier ID number;
9. Contractor contact for invoice questions (name, phone, or email);
10. Contractor remittance address;
11. Description of delivered goods or services provided and invoiced, including identifying information as applicable;
12. Number of delivered or completed units, increments, hours, or days as applicable, of each good or service invoiced;
13. Applicable payment methodology of each good or service invoiced;
14. Amount due for each compensable unit of good or service; and
15. Total amount due for the invoice period.

b) Contractor's invoices shall:

1. Only include charges for goods delivered or services provided as described in this Contract and in accordance with payment terms and conditions set forth in this Contract;
2. Only be submitted for goods delivered or services completed and shall not include any charge for future goods to be delivered or services to be performed;
3. Not include a line item for Contractor's taxes, which includes without limitation Contractor's sales and use tax, excise taxes, franchise taxes, real or personal Property taxes, or income taxes; and
4. Include shipping or delivery charges only as authorized in this Contract.

The timeframe for payment (or any discounts) begins only when the State is in receipt of an undisputed invoice that meets the minimum requirements of this Section.

- 6.5. **Payment of Invoice.** A payment by the State shall not prejudice the State's right to object to or question any payment, invoice, or other matter. A payment by the State shall not be construed as acceptance of goods delivered, any part of the services provided, or as approval of any amount invoiced.
- 6.6. **Invoice Reductions.** The Contractor's invoice shall be subject to reduction for amounts included in any invoice or payment that is determined by the State, on the basis of audits conducted in accordance with this Contract, to not constitute proper compensation for goods delivered or services provided.
- 6.7. **Deductions.** The State reserves the right to deduct from amounts, which are or shall become due and payable to the Contractor under this or any contract between the Contractor and the State of Tennessee, any amounts that are or shall become due and payable to the State of Tennessee by the Contractor.
- 6.8. **Prerequisite Documentation.** The Contractor shall not invoice the State under this Contract until the State has received the following, properly completed documentation.

- a) The Contractor shall complete, sign, and present to the State the "Authorization Agreement for Automatic Deposit Form" provided by the State. By doing so, the Contractor acknowledges and agrees that, once this form is received by the State, payments to the Contractor, under this or any other contract the Contractor has with the State of Tennessee, may be made by ACH; and
- b) The Contractor shall complete, sign, and return to the State the State-provided W-9 form. The taxpayer identification number on the W-9 form must be the same as the Contractor's Federal Employer Identification Number or Social Security Number referenced in the Contractor's Edison registration information.

7. MANDATORY TERMS AND CONDITIONS:

- 7.1. **Substitute Items Offered by the Contractor.** In the event that an awarded item is no longer being manufactured or is replaced by a functionally equivalent item with superior technological features to the item being replaced, Contractor may offer a substitute item ("Substitute"). The Substitute shall: (a) meet or exceed the functional, technical, and performance characteristics of the item being replaced; (b) not exceed the cost of the item being replaced by more than ten percent (10%); and (c) be available for order on the date Contractor requests to make the substitution. Contractor shall not make any substitutions for awarded items without the State's prior, written approval. Contractor shall submit any proposed substitutions to the Central Procurement Office and include sufficient information to show that criteria (a) -- (c) above are met. The Central Procurement Office may request sample Substitutes for inspection or testing.
- 7.2. **Purchase Order Release.** Agency submission of a purchase order to Contractor authorizes Contractor to deliver goods or provide services.
- 7.3. **Delivery.** Contractor shall provide all goods or services as required and described in this Contract and shall meet all service and delivery timelines specified in this Contract. All quotations shall be F.O.B. destination.
- 7.4. **Required Approvals.** The State is not bound by this Contract until it is duly approved by the Parties and all appropriate State officials in accordance with applicable Tennessee laws and regulations. Depending upon the specifics of this Contract, this may include approvals by the Commissioner of Finance and Administration, the Commissioner of Human Resources, the Comptroller of the Treasury, and the Chief Procurement Officer. Approvals shall be evidenced by a signature or electronic approval.
- 7.5. **Communications and Contacts.** All instructions, notices, consents, demands, or other communications required or contemplated by this Contract shall be in writing and shall be made by certified, first class mail, return receipt requested and postage prepaid, by overnight courier service with an asset tracking system, or by email. All communications, regardless of method of transmission, shall be addressed to the respective party at the appropriate mailing address or email address as stated below or any other address provided in writing by a party.

The Contractor:

Contractor
Contractor's Contact Name & Title
Address
Email Address
Telephone Number

State of Tennessee:

Karen Olive
Department of Health
710 James Robertson Parkway, Andrew Johnson Tower, 5th Floor
Nashville TN 37243
615-253-5686
Karen.Olive@tn.gov

All instructions, notices, consents, demands, or other communications shall be considered effective upon receipt or recipient confirmation as may be required.

- 7.6. **Modification and Amendment.** This Contract may be modified only by a written amendment signed by all parties and approved by all applicable State officials.
- 7.7. **Subject to Funds Availability.** The Contract is subject to the appropriation and availability of State or federal funds. In the event that the funds are not appropriated or are otherwise unavailable, the State reserves the right to terminate this Contract upon written notice to the Contractor. The State's exercise of its right to terminate this Contract shall not constitute a breach of Contract by the State. Upon receipt of the written notice, the Contractor shall cease all work associated with the Contract. If the State terminates this Contract due to lack of funds availability, the Contractor shall be entitled to compensation for all conforming goods requested and accepted by the State and for all satisfactory and authorized services completed as of the termination date. Should the State exercise its right to terminate this Contract due to unavailability of funds, the Contractor shall have no right to recover from the State any actual, general, special, incidental, consequential, or any other damages of any description or amount.
- 7.8. **Termination for Convenience.** The State may terminate this Contract for convenience without cause for any reason. The State's election to terminate this Contract for convenience shall be effective upon the date specified and shall not be deemed a breach of contract by the State. The Contractor shall be entitled to compensation for all conforming goods delivered and accepted by the State or for satisfactory, authorized services completed as of the termination date. In no event shall the State be liable to the Contractor for compensation for any good or service that has not been provided, nor shall the Contractor be relieved of any liability to the State for any damages or claims arising under this Contract.
- 7.9. **Termination for Cause.** If the Contractor fails to properly perform its obligations under this Contract in a timely or proper manner, or if the Contractor materially violates any terms of this Contract ("Breach Condition"), the State shall have the right to immediately terminate the Contract and withhold payments in excess of compensation for completed services or provided goods. Notwithstanding the above, the contractor shall not be relieved of liability to the State for damages sustained by virtue of any Breach Condition and the State may seek other remedies allowed at law or in equity

for breach of this Contract.

7.10. **Assignment and Subcontracting.** The Contractor shall not assign this Contract or enter into a subcontract for any of the goods or services provided under this Contract without the prior written approval of the State. Notwithstanding any use of the approved subcontractors, the Contractor shall be the prime contractor and responsible for compliance with all terms and conditions of this Contract. The State reserves the right to request additional information or impose additional terms and conditions before approving an assignment of this Contract in whole or in part or the use of subcontractors in fulfilling the Contractor's obligations under this Contract.

7.11. **Conflicts of Interest.** The Contractor warrants that no part of the Contractor's compensation shall be paid directly or indirectly to an employee or official of the State of Tennessee as wages, compensation, or gifts in exchange for acting as an officer, agent, employee, subcontractor, or consultant to the Contractor in connection with any work contemplated or performed under this Contract.

The Contractor acknowledges, understands, and agrees that this Contract shall be null and void if the Contractor is, or within the past six (6) months has been, an employee of the State of Tennessee or if the Contractor is an entity in which a controlling interest is held by an individual who is, or within the past six (6) months has been, an employee of the State of Tennessee.

7.12. **Nondiscrimination.** The Contractor hereby agrees, warrants, and assures that no person shall be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination in the performance of this Contract or in the employment practices of the Contractor on the grounds of handicap or disability, age, race, creed, color, religion, sex, national origin, or any other classification protected by federal or state law. The Contractor shall, upon request, show proof of nondiscrimination and shall post in conspicuous places, available to all employees and applicants, notices of nondiscrimination.

7.13. **Prohibition of Illegal Immigrants.** The requirements of Tenn. Code Ann. § 12-3-309 addressing the use of illegal immigrants in the performance of any contract to supply goods or services to the state of Tennessee, shall be a material provision of this Contract, a breach of which shall be grounds for monetary and other penalties, up to and including termination of this Contract.

- a) The Contractor agrees that the Contractor shall not knowingly utilize the services of an illegal immigrant in the performance of this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant in the performance of this Contract. The Contractor shall reaffirm this attestation, in writing, by submitting to the State a completed and signed copy of the document at: <https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/supplier-information-.html>, semi-annually during the Term. If the Contractor is a party to more than one contract with the State, the Contractor may submit one attestation that applies to all contracts with the State. All Contractor attestations shall be maintained by the Contractor and made available to State officials upon request.
- b) Prior to the use of any subcontractor in the performance of this Contract, and semi-annually thereafter, during the Term, the Contractor shall obtain and retain a current, written attestation that the subcontractor shall not knowingly utilize the services of an

illegal immigrant to perform work under this Contract and shall not knowingly utilize the services of any subcontractor who will utilize the services of an illegal immigrant to perform work under this Contract. Attestations obtained from subcontractors shall be maintained by the Contractor and made available to State officials upon request.

- c) The Contractor shall maintain records for all personnel used in the performance of this Contract. Contractor's records shall be subject to review and random inspection at any reasonable time upon reasonable notice by the State.
 - d) The Contractor understands and agrees that failure to comply with this section will be subject to the sanctions of Tenn. Code Ann. § 12-3-309 for acts or omissions occurring after its effective date.
 - e) For purposes of this Contract, "illegal immigrant" shall be defined as any person who is not: (i) a United States citizen; (ii) a Lawful Permanent Resident; (iii) a person whose physical presence in the United States is authorized; (iv) allowed by the federal Department of Homeland Security and who, under federal immigration laws or regulations, is authorized to be employed in the U.S.; or (v) is otherwise authorized to provide services under the Contract.
- 7.14. **Records.** The Contractor shall maintain documentation for all charges under this Contract. The books, records, and documents of the Contractor, for work performed or money received under this Contract, shall be maintained for a period of five (5) full years from the date of the final payment and shall be subject to audit at any reasonable time and upon reasonable notice by the State, the Comptroller of the Treasury, or their duly appointed representatives. The financial statements shall be prepared in accordance with generally accepted accounting principles.
- 7.15. **Monitoring.** The Contractor's activities conducted and records maintained, pursuant to this Contract, shall be subject to monitoring and evaluation by the State, the Comptroller of the Treasury, or their duly appointed representatives.
- 7.16. **Progress Reports.** The Contractor shall submit brief, periodic, progress reports to the State as requested.
- 7.17. **Strict Performance.** Failure by any Party to this Contract to require, in any one or more cases, the strict performance of any of the terms, covenants, conditions, or provisions of this Contract shall not be construed as a waiver or relinquishment of any term, covenant, condition, or provision. No term or condition of this Contract shall be held to be waived, modified, or deleted except by a written amendment signed by the Parties.
- 7.18. **Independent Contractor.** The parties shall not act as employees, partners, joint ventures, or associates of one another. The parties are independent contracting entities. Nothing in this Contract shall be construed to create an employer/employee relationship or to allow either party to exercise control or direction over the manner or method by which the other transacts its business affairs or provides its usual services. The employees or agents of one party are not employees or agents of the other party.

- 7.19. **Patient Protection and Affordable Care Act.** The Contractor agrees that it will be responsible for compliance with the Patient Protection and Affordable Care Act ("PPACA") with respect to itself and its employees, including any obligation to report health insurance coverage, provide health insurance coverage, or pay any financial assessment, tax, or penalty for not providing health insurance. The Contractor shall indemnify the State and hold it harmless for any costs to the State arising from contractor's failure to fulfill its PPACA responsibilities for itself or its employees.
- 7.20. **Limitation of State's Liability.** The State shall have no liability except as specifically provided in this Contract. In no event will the State be liable to the Contractor or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. Notwithstanding anything else herein, the State's total liability under this Contract (including without limitation any exhibits, schedules, amendments or other attachments to the Contract) or otherwise shall under no circumstances exceed the Maximum Liability. This limitation of liability is cumulative and not per incident.
- 7.21. **Limitation of Contractor's Liability.** In accordance with Tenn. Code Ann. § 12-3-701, the Contractor's liability for all claims arising under this Contract shall be limited to an amount equal to two (2) times the Maximum Liability amount and as may be amended. Except as set forth below, in no event will the Contractor be liable to the State or any other party for any lost revenues, lost profits, loss of business, decrease in the value of any securities or cash position, time, money, goodwill, or any indirect, special, incidental, punitive, exemplary or consequential damages of any nature, whether based on warranty, contract, statute, regulation, tort (including but not limited to negligence), or any other legal theory that may arise under this Contract or otherwise. PROVIDED THAT in no event shall this Section limit the liability of the Contractor for: (i) intellectual property or any Contractor indemnity obligations for infringement for third-party intellectual property rights; (ii) any claims covered by any specific provision in the Contract providing for liquidated damages; or (iii) any claims for intentional torts, criminal acts, fraudulent conduct, or acts or omissions that result in personal injuries or death.
- 7.22. **Hold Harmless.** The Contractor agrees to indemnify and hold harmless the State of Tennessee as well as its officers, agents, and employees from and against any and all claims, liabilities, losses, and causes of action which may arise, accrue, or result to any person, firm, corporation, or other entity which may be injured or damaged as a result of acts, omissions, or negligence on the part of the Contractor, its employees, or any person acting for or on its or their behalf relating to this Contract. The Contractor further agrees it shall be liable for the reasonable cost of attorneys' fees, court costs, expert witness fees, and other litigation expenses for the State to enforce the terms of this Contract.

In the event of any suit or claim, the Parties shall give each other immediate notice and provide all necessary assistance to respond. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn.

Code Ann. § 8-6-106.

- 7.23. **HIPAA Compliance.** The State and Contractor shall comply with obligations under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Health Information Technology for Economic and Clinical Health ("HITECH") Act and any other relevant laws and regulations regarding privacy (collectively the "Privacy Rules"). The obligations set forth in this Section shall survive the termination of this Contract.
- a) Contractor warrants to the State that it is familiar with the requirements of the Privacy Rules, and will comply with all applicable requirements in the course of this Contract.
 - b) Contractor warrants that it will cooperate with the State, including cooperation and coordination with State privacy officials and other compliance officers required by the Privacy Rules, in the course of performance of the Contract so that both parties will be in compliance with the Privacy Rules.
 - c) The State and the Contractor will sign documents, including but not limited to business associate agreements, as required by the Privacy Rules and that are reasonably necessary to keep the State and Contractor in compliance with the Privacy Rules. This provision shall not apply if information received or delivered by the parties under this Contract is NOT "protected health information" as defined by the Privacy Rules, or if the Privacy Rules permit the parties to receive or deliver the information without entering into a business associate agreement or signing another document.

The Contractor will indemnify the State and hold it harmless for any violation by the Contractor or its subcontractors of the Privacy Rules. This includes the costs of responding to a breach of protected health information, the costs of responding to a government enforcement action related to the breach, and any fines, penalties, or damages paid by the State because of the violation.

- 7.24. **Tennessee Consolidated Retirement System.** Subject to statutory exceptions contained in Tenn. Code Ann. §§ 8-36-801, et seq., the law governing the Tennessee Consolidated Retirement System ("TCRS"), provides that if a retired member of TCRS, or of any superseded system administered by TCRS, or of any local retirement fund established under Tenn. Code Ann. §§ 8-35-101, et seq., accepts State employment, the member's retirement allowance is suspended during the period of the employment. Accordingly and notwithstanding any provision of this Contract to the contrary, the Contractor agrees that if it is later determined that the true nature of the working relationship between the Contractor and the State under this Contract is that of "employee/employer" and not that of an independent contractor, the Contractor, if a retired member of TCRS, may be required to repay to TCRS the amount of retirement benefits the Contractor received from TCRS during the Term.
- 7.25. **Tennessee Department of Revenue Registration.** The Contractor shall comply with all applicable registration requirements contained in Tenn. Code Ann. §§ 67-6-601 -- 608. Compliance with applicable registration requirements is a material requirement of this Contract.
- 7.26. **Debarment and Suspension.** The Contractor certifies, to the best of its knowledge and belief, that it, its current and future principals, its current and future subcontractors

and their principals:

- a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal or state department or agency;
- b) have not within a three (3) year period preceding this Contract been convicted of, or had a civil judgment rendered against them from commission of fraud, or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or grant under a public transaction; violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;
- c) are not presently indicted or otherwise criminally or civilly charged by a government entity (federal, state, or local) with commission of any of the offenses detailed in section b. of this certification; and
- d) have not within a three (3) year period preceding this Contract had one or more public transactions (federal, state, or local) terminated for cause or default.

The Contractor shall provide immediate written notice to the State if at any time it learns that there was an earlier failure to disclose information or that due to changed circumstances, its principals or the principals of its subcontractors are excluded or disqualified.

- 7.27. **Force Majeure.** "Force Majeure Event" means fire, flood, earthquake, elements of nature or acts of God, wars, riots, civil disorders, rebellions or revolutions, acts of terrorism or any other similar cause beyond the reasonable control of the party except to the extent that the non-performing party is at fault in failing to prevent or causing the default or delay, and provided that the default or delay cannot reasonably be circumvented by the non-performing party through the use of alternate sources, workaround plans or other means. A strike, lockout or labor dispute shall not excuse either party from its obligations under this Contract. Except as set forth in this Section, any failure or delay by a party in the performance of its obligations under this Contract arising from a Force Majeure Event is not a default under this Contract or grounds for termination. The non-performing party will be excused from performing those obligations directly affected by the Force Majeure Event, and only for as long as the Force Majeure Event continues, provided that the party continues to use diligent, good faith efforts to resume performance without delay. The occurrence of a Force Majeure Event affecting Contractor's representatives, suppliers, subcontractors, customers or business apart from this Contract is not a Force Majeure Event under this Contract. Contractor will promptly notify the State of any delay caused by a Force Majeure Event (to be confirmed in a written notice to the State within one (1) day of the inception of the delay) that a Force Majeure Event has occurred, and will describe in reasonable detail the nature of the Force Majeure Event. If any Force Majeure Event results in a delay in Contractor's performance longer than forty-eight (48) hours, the State may, upon notice to Contractor: (a) cease payment of the fees until Contractor resumes performance of the affected obligations; or (b) immediately terminate this Contract or any purchase order, in whole or in part, without further payment except for fees then due and payable. Contractor will not increase its charges under this Contract or charge the State any fees other than those provided for in this Contract as the result of a Force Majeure Event.

- 7.28. **State and Federal Compliance.** The Contractor shall comply with all applicable state and federal laws and regulations in the performance of this Contract.
- 7.29. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to its conflict or choice of law rules. The Tennessee Claims Commission or the state or federal courts in Tennessee shall be the venue for all claims, disputes, or disagreements arising under this Contract. The Contractor acknowledges and agrees that any rights, claims, or remedies against the State of Tennessee or its employees arising under this Contract shall be subject to and limited to those rights and remedies available under Tenn. Code Ann. §§ 9-8-101 -- 408.
- 7.30. **Entire Agreement.** This Contract is complete and contains the entire understanding between the parties relating to its subject matter, including all the terms and conditions of the parties' agreement. This Contract supersedes any and all prior understandings, representations, negotiations, and agreements between the parties, whether written or oral.
- 7.31. **Severability.** If any terms and conditions of this Contract are held to be invalid or unenforceable as a matter of law, the other terms and conditions of this Contract shall not be affected and shall remain in full force and effect. The terms and conditions of this Contract are severable.
- 7.32. **Headings.** Section headings of this Contract are for reference purposes only and shall not be construed as part of this Contract.
- 7.33. **Incorporation of Additional Documents.** Each of the following documents is included as a part of this Contract by reference. In the event of a discrepancy or ambiguity regarding the Contractor's duties, responsibilities, and performance under this Contract, these items shall govern in order of precedence below:
- a) any amendment to this Contract, with the latter in time controlling over any earlier amendments;
 - b) this Contract with any attachments or exhibits (excluding the items listed at subsections c. through f., below);
 - c) any clarifications of or addenda to the Contractor's response seeking this Contract;
 - d) the Invitation to Bid, as may be amended, requesting responses in competition for this Contract;
 - e) any technical specifications provided to respondents during the procurement process to award this Contract; and,
 - f) the Contractor's response seeking this Contract.
- 7.34. **Iran Divestment Act.** The requirements of Tenn. Code Ann. § 12-12-101 et.seq., addressing contracting with persons with investment activities in Iran, shall be a material provision of this Contract. The Contractor agrees, under penalty of perjury, that to the best of its knowledge and belief that it is not on the list created pursuant to

7.35. Insurance Requirements:

- 7.35.1. **Insurance.** Contractor shall provide the State a certificate of insurance ("COI") evidencing the coverages and amounts specified below. The COI shall be provided ten (10) business days prior to the Effective Date and again upon renewal or replacement of coverages required by this Contract. If insurance expires during the Term, the State must receive a new COI at least thirty (30) calendar days prior to the insurance's expiration date. If the Contractor loses insurance coverage, does not renew coverage, or for any reason becomes uninsured during the Term, the Contractor shall notify the State immediately.

The COI shall be on a form approved by the Tennessee Department of Commerce and Insurance ("TDCI") and signed by an authorized representative of the insurer. The COI shall list each insurer's national association of insurance commissioners (also known as NAIC) number or federal employer identification number and list the State of Tennessee, Risk Manager, 312 Rosa L. Parks Ave., 3rd floor Central Procurement Office, Nashville, TN 37243 in the certificate holder section. At any time, the State may require the Contractor to provide a valid COI detailing coverage description; insurance company; policy number; exceptions; exclusions; policy effective date; policy expiration date; limits of liability; and the name and address of insured. The Contractor's failure to maintain or submit evidence of insurance coverage is considered a material breach of this Contract.

If the Contractor desires to self-insure, then a COI will not be required to prove coverage. In place of the COI, the Contractor must provide a certificate of self-insurance or a letter on the Contractor's letterhead detailing its coverage, liability policy amounts, and proof of funds to reasonably cover such expenses. Compliance with Tenn. Code Ann. § 50-6-405 and the rules of the TDCI is required for the Contractor to self-insure workers' compensation.

All insurance companies must be: (a) acceptable to the State; (b) authorized by the TDCI to transact business in the State of Tennessee; and (c) rated A- VII or better by A. M. Best. The Contractor shall provide the State evidence that all subcontractors maintain the required insurance or that the subcontractors are included under the Contractor's policy.

The Contractor agrees to name the State as an additional insured on any insurance policies with the exception of workers' compensation (employer liability) and professional liability (errors and omissions) ("Professional Liability") insurance. Also, all policies shall contain an endorsement for a waiver of subrogation in favor of the State.

The deductible and any premiums are the Contractor's sole responsibility. Any deductible over fifty thousand dollars (\$50,000) must be approved by the State. The Contractor agrees that the insurance requirements specified in this Section do not reduce any liability the Contractor has assumed under this Contract including any indemnification or hold harmless requirements.

The State agrees that it shall give written notice to the Contractor as soon as practicable after the State becomes aware of any claim asserted or made against the State, but in no event later than thirty (30) calendar days after the State becomes aware of such claim. The failure of the State to give notice shall only relieve the Contractor of its obligations under this Section to the extent that the

Contractor can demonstrate actual prejudice arising from the failure to give notice. This Section shall not grant the Contractor or its insurer, through its attorneys, the right to represent the State in any legal matter, as the right to represent the State is governed by Tenn. Code Ann. § 8-6-106.

All coverage required shall be on a primary basis and noncontributory with any other insurance coverage or self-insurance carried by the State. The State reserves the right to amend or require additional endorsements, types of coverage, and higher or lower limits of coverage depending on the nature of the work. Purchases or contracts involving any hazardous activity or equipment, tenant, concessionaire and lease agreements, alcohol sales, cyber-liability risks, environmental risks, special motorized equipment, or property may require customized insurance requirements (e.g. umbrella liability insurance) in addition to the general requirements listed below.

7.35.2. Workers' Compensation and Employer Liability Insurance.

- a) For Contractors statutorily required to carry workers' compensation and employer liability insurance, the Contractor shall maintain:
- b) Workers' compensation and employer liability insurance in the amounts required by appropriate state statutes; or
- c) In an amount not less than one million dollars (\$1,000,000) including employer liability of one million dollars (\$1,000,000) per accident for bodily injury by accident, one million dollars (\$1,000,000) policy limit by disease, and one million dollars (\$1,000,000) per employee for bodily injury by disease.
- d) If the Contractor certifies that it is exempt from the requirements of Tenn. Code Ann. §§ 50-6-101 -- 103, then the Contractor shall furnish written proof of such exemption for one or more of the following reasons:
 1. The Contractor employees fewer than five (5) employees;
 2. The Contractor is a sole proprietor;
 3. The Contractor is in the construction business or trades with no employees;
 4. The Contractor is in the coal mining industry with no employees;
 5. The Contractor is a state or local government; or
 6. The Contractor self-insures its workers' compensation and is in compliance with the TDCI rules and Tenn. Code Ann. § 50-6-405.

7.35.3. Commercial General Liability Insurance.

- a) The Contractor shall maintain commercial general liability insurance, which shall be written on an Insurance Services Office, Inc. (also known as ISO) occurrence form (or a substitute form providing equivalent coverage) and shall cover liability arising from property damage, premises/operations, independent contractors, contractual liability, completed operations/products, personal and advertising injury, and liability assumed under an insured contract (including the tort liability

of another assumed in a business contract).

- b) The Contractor shall maintain bodily injury/property damage with a combined single-limit not less than one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) aggregate for bodily injury and property damage, including products and completed operations coverage with an aggregate limit of at least two million dollars (\$2,000,000).

7.35.4. **Automobile Liability Insurance.** The Contractor shall maintain automobile liability insurance which shall cover liability arising out of any automobile (including owned, leased, hired, and non-owned automobiles). The Contractor shall maintain bodily injury/property damage with a limit not less than one million dollars (\$1,000,000) per occurrence or combined single limit.

7.36. **Major Procurement Contract Sales and Use Tax.** Pursuant to Tenn. Code Ann. § 4-39-102 and to the extent applicable, the Contractor and the Contractor's subcontractors shall remit sales and use taxes on the sales of goods or services that are made by the Contractor or the Contractor's subcontractors and that are subject to tax.

8. SPECIAL TERMS AND CONDITIONS:

8.1. **Conflicting Terms and Conditions.** Should any of these special terms and conditions conflict with any other terms and conditions of this Contract, the special terms and conditions shall be subordinate to the Contract's other terms and conditions.

8.2. **Confidentiality of Records.** Strict standards of confidentiality of records and information shall be maintained in accordance with applicable state and federal law. All material and information, regardless of form, medium or method of communication, provided to the Contractor by the State or acquired by the Contractor on behalf of the State that is regarded as confidential under state or federal law shall be regarded as "Confidential Information." Nothing in this Section shall permit Contractor to disclose any Confidential Information, regardless of whether it has been disclosed or made available to the Contractor due to intentional or negligent actions or inactions of agents of the State or third parties. Confidential Information shall not be disclosed except as required or permitted under state or federal law. Contractor shall take all necessary steps to safeguard the confidentiality of such material or information in conformance with applicable state and federal law.

The obligations set forth in this Section shall survive the termination of this Contract.

8.3. **Prohibited Advertising or Marketing.** The Contractor shall not suggest or imply in advertising or marketing materials that Contractor's goods or services are endorsed by the State. The restrictions on Contractor advertising or marketing materials under this Section shall survive the termination of this Contract.

8.4. **Partial Takeover of Contract.** The State may, at its convenience and without cause, exercise a partial takeover of any service that the Contractor is obligated to perform under this Contract, including any service which is the subject of a subcontract

between Contractor and a third party (a "Partial Takeover"). A Partial Takeover of this Contract by the State shall not be deemed a breach of contract. The Contractor shall be given at least thirty (30) days prior written notice of a Partial Takeover. The notice shall specify the areas of service the State will assume and the date the State will be assuming. The State's exercise of a Partial Takeover shall not alter the Contractor's other duties and responsibilities under this Contract. The State reserves the right to withhold from the Contractor any amounts the Contractor would have been paid but for the State's exercise of a Partial Takeover. The amounts shall be withheld effective as of the date the State exercises its right to a Partial Takeover. The State's exercise of its right to a Partial Takeover of this Contract shall not entitle the Contractor to any actual, general, special, incidental, consequential, or any other damages irrespective of any description or amount.

- 8.5. **Unencumbered Personnel.** The Contractor shall not restrict its employees, agents, subcontractors or principals who perform services for the State under this Contract from performing the same or similar services for the State after the termination of this Contract, either as a State employee, an independent contractor, or an employee, agent, subcontractor or principal of another contractor with the State.



March 6, 2019

Tracey Woodard
Med Tech
Phone: 615-262-6381
Tennessee Dept of Health – Nashville
Laboratory Services
630 Hart Lane
Nashville, TN 37216

Dear Tracey Woodard,

Cepheid is the original and sole manufacturer of the Xpert MTB-RIF (10) (part# GXMTB/RIF-US-10) and Xpert Carba-R, IVD (10) (part# GXCARBAR-10) products within the United States. Cepheid is also the sole authorized provider of the GXMTB/RIF-US-10 and GXCARBAR-10 products to the Tennessee Department of Health located at 630 Hart Lane Nashville, TN 37216. If you have any questions, please do not hesitate to contact me.

Warm Regards,

A handwritten signature in blue ink, appearing to read "Josh", with a long horizontal line extending to the right.

Hung (Josh) K. Tran
Cepheid
Commercial Counsel
408-400-4475
josh.tran@cepheid.com



Sales Quote

Cepheid US
 904 Caribbean Dr
 Sunnyvale CA 94089
 USA

Quote Number 20041097
 Quote Date 01/23/2019
 Quote Expire 08/31/2019

Phone 888-838-3222
 Fax 408-734-1346

Print Date 02/07/2019
 Contact ordermanagement@cepheid.com

Sold To 100000853 TN Dept of Health - Nashville Laboratory Services 630 Hart Lane Nashville TN 37216-2625 USA	Ship To 100000853 TN Dept of Health - Nashville Laboratory Services 630 Hart Lane Nashville TN 37216-2625 USA
Buyer Robin Holjes Phone 615-741-0594	Phone 615-262-6393

Attention: Tracy McLemore Phone: 615-837-5487
 Sales Rep: Jennifer Stephenson GPO: Non-Des Gov

Line	Item Number	Due Date	Required Date	Qty	UOM	Unit Price	Discount	Net Price	Extended Price
0	GXMTB/RIF-US-10 KIT,MTB,IVD,US	02/07/2019	02/11/2019	1.000	EA	700.00	105.00-	595.00	595.00
10	GXCARBAR-10 KIT,CARBA-R,IVD,GX	02/07/2019	02/11/2019	1.000	EA	550.00	82.50-	467.50	467.50

YOUR PURCHASE ORDER MUST REFERENCE THIS QUOTE# 20041097 TO RECEIVE THE ABOVE DISCOUNTS. PRICE ADJUSTMENTS MAY NOT BE ALLOWED AFTER SHIPMENT.

Standard orders ship via FedEx 2-Day. Quoted freight charge is an estimate only and final charges will be prepaid and added to invoice. Customer's preferred carrier and account number are required if shipped collect.

Cepheid's terms and conditions and any direct agreement terms shall apply to any purchase order issued by the Customer and no other contrary or additional terms or conditions contained in customer's purchase orders shall apply. Submission of a purchase order requires Customer's acceptance of Cepheid's terms and conditions.

ALL SALES ARE FINAL AND ARE NON-RETURNABLE AND NON-REFUNDABLE.

Please fax Purchase Orders to 408-716-2840, or email a PDF version of the Purchase Order to ordermanagement@cepheid.com



Subtotal	1,062.50
Shipping & Handling	0.00
Total USD	1,062.50

GPO	Non-Des Gov	Salesperson
IDN	PHL	Salesperson
Payment Terms	Net 30 Days	
Freight Terms	PPD	
FOB Point	Destination	
Ship Via	FEDEX 2DAY (3:00 PM SECOND BUSINESS)	



GeneXpert® Service Agreement

Cepheid US
 904 Caribbean Dr
 Sunnyvale CA 94089
 USA

Quote Number CQN-00002275 v1.0
 Quote Date 03/04/2019
 Quote Expire 06/02/2019
 Print Date 03/04/2019 09:34:23

Phone (888) 838-3222
 Fax (408) 716-2442
 Email service.agreements@cepheid.com

Payment Terms Net 30 Days

Sold To	Ship To
1000000853 TN Dept of Health - Nashville Laboratory Services 630 Hart Lane Nashville TN 37216-2625 USA	1000000853 TN Dept of Health - Nashville 630 Hart Lane Nashville TN 37216-2625 USA

Notes:

No contrary or additional terms or conditions contained on the purchase order shall apply. Applicable taxes will be applied on final invoice. PLEASE ENSURE PURCHASE ORDER COVERS VALUE OF CONTRACT VALUE AND APPLICABLE TAXES.

Line	Item Number	Serial Number	Start Date	End Date	Qty	Net Price	Discount	Extended Price
1	48S32A1Y	830075	11/13/2019	11/12/2020	12.00	USD 29,600		USD 29,600.00

Total Extended Price: USD 29,600.00



GeneXpert® Service Agreement

ADVANTAGE LEVEL SERVICE AGREEMENT INCLUDES:

24x7 Phone Support

Onsite 5x10 hours (8AM – 6PM)

Annual Preventative Maintenance Check-up performed by Field Service Engineer

Includes Parts, Labor & Travel

Software Upgrades included

98% Uptime Guarantee

Advantage Service Agreement for GeneXpert s/n: **830075**

Acceptance of any Purchase Order is Subject to Customer's Acceptance of **Cepheid's** Terms and Conditions.

Customer's Purchase Order Must Indicate Quote: **CQN-00002275**

Please send a copy of your approved purchase order to: service.agreements@cepheid.com or via fax to: (408) 716-2442



GeneXpert® Service Agreement

This Service Agreement (the “Agreement”) is entered into this 4th day of March, 2019 between Cepheid, with offices at 904 Caribbean Drive, Sunnyvale, CA 94089 and Customer TN Dept of Health - Nashville Laboratory Services

Agreement Type Quoted: Renewal

GeneXpert System Configuration	Serial Number	Period of Coverage		Service Plan
		Start Date	End Date	
INFINITY48S-32	830075	11/13/2019	11/12/2020	48S32A1Y

The instrument listed above is herein referred as “Equipment”.



GeneXpert® Service Agreement

Plan*	Onsite Coverage*	Key Deliverables*	Uptime Guarantee
Advantage Plus	<ul style="list-style-type: none"> ■ 5 days per week ■ 8am to 5pm (local time) ■ Weekend & holiday coverage** ■ 9am – 4pm 	<p>- FSE On-Site Annual Preventative Maintenance</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 ■ Loaner system at no additional charge*** ■ One Wellness visit**** 	98%
Advantage	<ul style="list-style-type: none"> ■ 5 days per week ■ 8am to 5pm (local time) 	<p>FSE On-Site Annual Preventative Maintenance</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 	

*Under this Agreement, Tech Support, maintenance and repair for covered GeneXpert systems will be prioritized over customers without a service plan. As part of the services offered under this Agreement, Cepheid will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert/GeneXpert Infinity system repair incurred during the duration of this Agreement. 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. All Plans above include telephone technical support according to Section 8 below. Service visits exclude holidays recognized by Cepheid (list available



GeneXpert® Service Agreement

upon request). During this Agreement, Customer is entitled to any and all GeneXpert/GeneXpert Infinity system updates (bug fixes etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge. This Agreement does not cover any upgrades to hardware or third party software.

****Weekend and holiday coverage pertains to system down and excludes routine service interventions. Routine service repairs and preventative maintenance will be completed during standard business hours.**

***** In the event that an Advantage Plus customer's Equipment is down for greater than 3 consecutive business days, Cepheid will provide a comparable no charge loaner system for Advantage Plus Customer upon request. Notwithstanding the foregoing, Advantage Plus Customers with Equipment that are Infinity systems will be provided loaner GX16 system(s) at no additional charge with an equivalent number of modules as Advantage Plus Customer's Infinity system.**

******For the purpose of this Agreement, a Wellness visit is an annual scheduled visit to perform preventative maintenance, which includes basic system overview and routine maintenance checks. A Wellness visit does not include Xpert Check.**

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.



GeneXpert® Service Agreement

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.



GeneXpert® Service Agreement

10. **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.**
11. **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.**
12. **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.**
13. **Service under this Agreement shall not be transferable and shall be binding on the Parties hereto, their successors and assigns.**



GeneXpert® Service Agreement

Cepheid US
 904 Caribbean Dr
 Sunnyvale CA 94089
 USA

Quote Number CQN-00002228 v1.0
 Quote Date 02/22/2019
 Quote Expire 06/30/2019
 Print Date 02/22/2019 07:37:51

Phone (888) 838-3222
 Fax (408) 716-2442
 Email service.agreements@cepheid.com

Payment Terms Net 30 Days

Sold To	Ship To
1000000853 TN Dept of Health - Nashville Laboratory Services 630 Hart Lane Nashville TN 37216-2625 USA	1000000853 TN Dept of Health - Nashville 630 Hart Lane Nashville TN 37216-2625 USA

Notes: For questions, contact Alexander.Rodriguez@cepheid.com or call 408-400-8475. Thank you!

**No contrary or additional terms or conditions contained on the purchase order shall apply.
 Applicable taxes will be applied on final invoice. PLEASE ENSURE PURCHASE ORDER COVERS
 VALUE OF CONTRACT VALUE AND APPLICABLE TAXES.**

Line	Item Number	Serial Number	Start Date	End Date	Qty	Net Price	Discount	Extended Price
1	GX44A1Y	707505	03/01/2019	02/29/2020	12.00	USD 6,900		USD 6,900.00

Total Extended Price: USD 6,900.00



GeneXpert® Service Agreement

ADVANTAGE LEVEL SERVICE AGREEMENT INCLUDES:

24x7 Phone Support

Onsite 5x10 hours (8AM – 6PM)

Annual Preventative Maintenance Check-up performed by Field Service Engineer

Includes Parts, Labor & Travel

Software Upgrades included

98% Uptime Guarantee

Advantage Service Agreement for GeneXpert s/n: **707505**

Acceptance of any Purchase Order is Subject to Customer's Acceptance of **Cepheid's** Terms and Conditions.

Customer's Purchase Order Must Indicate Quote: **CQN-00002228**

Please send a copy of your approved purchase order to: service.agreements@cepheid.com or via fax to: (408) 716-2442



GeneXpert® Service Agreement

This Service Agreement (the “Agreement”) is entered into this 22th day of February, 2019 between Cepheid, with offices at 904 Caribbean Drive, Sunnyvale, CA 94089 and Customer TN Dept of Health - Nashville Laboratory Services

Agreement Type Quoted: New

GeneXpert System Configuration	Serial Number	Period of Coverage		Service Plan
		Start Date	End Date	
GXIV-4	707505	03/01/2019	02/29/2020	GX44A1Y

The instrument listed above is herein referred as “Equipment”.



GeneXpert® Service Agreement

Plan*	Onsite Coverage*	Key Deliverables*	Uptime Guarantee
Advantage Plus	<ul style="list-style-type: none"> ■ 5 days per week ■ 8am to 5pm (local time) ■ Weekend & holiday coverage** ■ 9am – 4pm 	<p>- FSE On-Site Annual Preventative Maintenance</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 ■ Loaner system at no additional charge*** ■ One Wellness visit**** 	98%
Advantage	<ul style="list-style-type: none"> ■ 5 days per week ■ 8am to 5pm (local time) 	<p>FSE On-Site Annual Preventative Maintenance</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 	

*Under this Agreement, Tech Support, maintenance and repair for covered GeneXpert systems will be prioritized over customers without a service plan. As part of the services offered under this Agreement, Cepheid will provide, at no additional charge, all parts, labor, and return shipping costs associated with GeneXpert/GeneXpert Infinity system repair incurred during the duration of this Agreement. 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. All Plans above include telephone technical support according to Section 8 below. Service visits exclude holidays recognized by Cepheid (list available



GeneXpert® Service Agreement

upon request). During this Agreement, Customer is entitled to any and all GeneXpert/GeneXpert Infinity system updates (bug fixes etc.) and Cepheid software upgrades (software feature enhancements) at no additional charge. This Agreement does not cover any upgrades to hardware or third party software.

****Weekend and holiday coverage pertains to system down and excludes routine service interventions. Routine service repairs and preventative maintenance will be completed during standard business hours.**

***** In the event that an Advantage Plus customer's Equipment is down for greater than 3 consecutive business days, Cepheid will provide a comparable no charge loaner system for Advantage Plus Customer upon request. Notwithstanding the foregoing, Advantage Plus Customers with Equipment that are Infinity systems will be provided loaner GX16 system(s) at no additional charge with an equivalent number of modules as Advantage Plus Customer's Infinity system.**

******For the purpose of this Agreement, a Wellness visit is an annual scheduled visit to perform preventative maintenance, which includes basic system overview and routine maintenance checks. A Wellness visit does not include Xpert Check.**

TERMS AND CONDITIONS

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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.



GeneXpert® Service Agreement

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.

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.



GeneXpert® Service Agreement

10. **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.**
11. **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.**
12. **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.**
13. **Service under this Agreement shall not be transferable and shall be binding on the Parties hereto, their successors and assigns.**

Specifications for Cepheid Contract

Kits

1. Sample extraction process is fully automated and integrated with an automated real-time PCR system. Contributes to ease of use, productivity, reproducibility and reduced turn-around-time.
2. Simplicity and ease of use for true deployability and sustainability.
3. Only five (5) manual steps to introduce specimen into instrument.
4. Batching is not required to achieve either operational efficiency or cost savings.
5. Continuous sample processing is the optimum mode of operation – Allows true 24/7 results.
6. Random access capability – different assay protocols can be run at the same time or may be started at different times and run at the same time.
7. Each assay contains sample processing control, internal control, and probe check control – external controls are not required.
8. Does not require separately processed controls with each run.
9. Results in less than 75 minutes on machine with serial number 707505. Results in 45 minutes on machine with serial number 830075.
10. Closed System – reduces potential for amplicon contamination.
11. No special lab requirements for PCR setup and testing.
12. Utilizes primarily lyophilized reagent technology vs. liquid reagents – contributes to ease of use, reagent stability, and reproducibility.

Service

13. Software upgrades will be kept current and installed at no additional charge.
14. Vendor will provide a toll-free number for 24 hour technical support, 7 days per week, 365 days per year.
15. All necessary repairs will be addressed within 24 hours of service call at no additional expense to the state of Tennessee. The state will not authorize payment for any travel expenses incurred. Repairs shall be completed within 3 business days.
16. XPERT Check calibration kits will be provided annually at no additional cost on machine with serial number 707505.
17. Infinity annual calibration checks on machine with serial number 830075 may be performed by the operator or by a Cepheid Field Service Engineer during annual maintenance or if responding to a module failure.