

**REAGENT PURCHASE AND SYSTEM LOAN AGREEMENT**

**("Master Agreement")**



10210 Genetic Center Drive  
 San Diego, CA 92121-4362  
 (858) 410-8000  
 (800) 523-5001 FAX: (800) 288-3141  
 (800) 342-7441 (FAX in Canada)

Sales Representative: Charles Jubb  
 Territory: 710 /ext: 5318  
 Customer #: 1030244000  
 Contract #: 103024400011109

The INSTRUMENTATION/EQUIPMENT described in this AGREEMENT shall be located at the address indicated below, and shall not be removed or relocated without GEN-PROBE's prior written consent.

Date: April 21, 2009

**Billing Address**

San Mateo County  
 ATTN: Public Health Div.-Accounts Payable  
 225 West 37th Avenue  
 San Mateo, CA 94403  
 415-573-2332

**Shipping Address**

San Mateo County  
 ATTN: Bruce Fujikawa-Room 113  
 225 West 37th Avenue  
 San Mateo, CA 94403  
 415-573-2332

Contract Period: The "Contract Period" shall commence on the date this Agreement has been executed by both Customer and Gen-Probe (the "Start Date") and shall terminate three (3) years following the Start Date.

**REAGENT PURCHASE SCHEDULE:**

Product Number	Description	Price/Kit	Monthly Quantity	Extended Price	3-Month (Quarterly) Quantity	12-Month (Yearly) Quantity
1032	Kit, APTIMA COMBO 2	\$ 1,025.00	11.7	\$ 11,992.50	35.1	140.4
1040	Kit, APTIMA COMBO 2 Urine Spec Coll	\$ 62.50	12.9	\$ 806.25	38.7	154.8
1041	Kit, APTIMA COMBO 2 Swab Spec Coll	\$ 62.50	16.3	\$ 1,018.75	48.9	195.6
1048	Kit, APTIMA Auto Detect Rgt	\$ 45.00	4.0	\$ 180.00	12.0	48.0
2800	Kit, AccuProbe RGTS 200-TESTS	\$ 75.00	0.3	\$ 22.50	0.9	3.6
2845	Kit, AccuProbe, AVIUM COMPLEX	\$ 266.00	0.5	\$ 133.00	1.5	6.0
2850	Kit, AccuProbe, M. GORDONAE	\$ 266.00	0.3	\$ 79.80	0.9	3.6
2855	Kit, AccuProbe, M. KANSASII	\$ 266.00	0.4	\$ 106.40	1.2	4.8
2860	Kit, AccuProbe, M. TUBERCULOSIS	\$ 266.00	0.6	\$ 159.60	1.8	7.2
1791	Kit, Detection Rgt	\$ 27.00	0.2	\$ 5.40	0.6	2.4
2101	Kit, Bleach Enhancer/Cleaning	\$ 189.00	0.7	\$ 132.30	2.1	8.4
1190	12 mm, White Press Seal Caps, Ancillary	\$ 10.00	0.1	\$ 1.00	0.3	1.2
<b>MONTHLY TOTAL:</b>				<b>\$ 14,637.50</b>		

**INSTRUMENTATION/EQUIPMENT ("System"):**

(Note: Systems may be reconditioned or refilled)

Quantity & Catalog No.	Description
1 x 302281	DTS 800 System
3 x 5524	SB100 Dry Heat Bath/Vortexer
1 x 32001	INST, LDR 450I
1 x 3078	Dispenser, 5ML
2 x 1714	Dispenser, 1 or 2 ML
1 x 2113	Pipetter, Eppendorf Repeater

**SPECIAL CONDITIONS:**

Account is being upgraded from a DTS 402 to a DTS 803.

Freight Terms: FCA Destination prepaid and added to invoice.

This Agreement, including the Terms and Conditions on the REVERSE side, contains the entire agreement between the parties with respect to the subject matter herein. If not signed by Customer within 30 days of date listed above, Gen-Probe retains the right to renegotiate the price(s) on this contract.

\*Please return original (signed) agreement to Gen-Probe

Authorized Signature: \_\_\_\_\_  
 Typed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_

Accepted By Gen-Probe:

Authorized Signature: \_\_\_\_\_  
 Brian Hansen  
 Vice President, North American Sales  
 Date: \_\_\_\_\_

v. 061608

Continued on Reverse

## REAGENT PURCHASE AND DTS SYSTEM LOAN AGREEMENT TERMS AND CONDITIONS

1. **SYSTEM LOAN.** During the Contract Period, Gen-Probe agrees to loan to Customer the System, and Customer agrees to purchase from Gen-Probe the reagents listed under the Reagent Purchase Schedule ("Reagent Schedule") set forth on the reverse side ("Reagent(s)") in the monthly volumes set forth thereon, subject to the terms and conditions of this Agreement. Customer will return the System to Gen-Probe immediately upon expiration of the Contract Period.
2. **REAGENT PURCHASE.** Although monthly quantities may vary, Customer's average Reagent purchases annually must be equal to or exceed the order quantity specified in the Reagent Schedule to be deemed compliant with the contract.
3. **REAGENT PRICE ADJUSTMENTS.** Reagent prices are based on agreed upon volume requirements. If, during the Contract Period, Customer's Annual Reagent Volume purchased is deemed non-compliant (failure to average or exceed the agreed upon volume as indicated in the Reagent Schedule), Gen-Probe may adjust the prices to reflect the appropriate discounts based on actual volume of reagents purchased. If the Contract Period is modified (i.e., extended or abbreviated) volume discount pricing will be adjusted to meet the new Reagent volume purchased. In the event of early termination of this Agreement by Customer, Customer shall purchase all remaining Reagents set forth in the Reagent Schedule that Customer committed to purchase during the Contract Period.
4. **PRICING AND SHIPPING.** An automatic 4% price increase will be effective on each anniversary of the Start Date through the remainder of the Contract Period.  
Freight terms are as set forth on the reverse side. All prices for Reagents are FCA Origin, freight prepaid and added to the invoice as a separate item. Customer assumes all shipping liability.
5. **PURCHASE ORDERS.** In the event of a conflict between the terms of this Agreement, any purchase order, or additional terms and conditions supplied by Customer (if any), the terms of this Agreement shall control and prevail. Any additional terms and conditions accompanying a subsequent Customer Purchase Order or other documentation must be agreed upon, in writing, and signed by both parties in order to be valid.
6. **PAYMENT TERMS.** Customer shall make all payments due under this Agreement net thirty (30) days from the date of invoice. Late payment fees of 2% of the minimum monthly payment may be assessed for payments received after they are due and may result in Gen-Probe's placing future Customer orders on hold. At the end of the Contract Period, or in the event of termination of this Agreement, Customer will be billed monthly until the entire System has been returned to Gen-Probe.
7. **TAXES.** Fees and other charges described in this Agreement do not include federal, state or local sales, use, property, excise, service, or similar taxes ("Tax(es)") now or hereafter levied, all of which shall be for Customer's account. With respect to state/local sales tax, direct pay permits, or a valid tax-exempt certificates must be provided to Gen-Probe prior to the execution of this Agreement. If Gen-Probe is required to pay Taxes (except taxes on Gen-Probe's income), Gen-Probe shall invoice Customer for such Taxes, including interest and penalties. Customer hereby agrees to indemnify Gen-Probe for and hold it harmless from any Taxes and related costs, interest and penalties paid or payable by Gen-Probe.
8. **UNAUTHORIZED USE.** Customer agrees to use the System solely in conjunction with Reagents or other supplies expressly authorized by Gen-Probe.
9. **TITLE.** Gen-Probe shall hold exclusive title to the System and may assign, transfer, pledge or sell Gen-Probe's interest in the System without notice to or approval from Customer. Gen-Probe is Gen-Probe Sales & Service, Inc., a wholly-owned distribution subsidiary of Gen-Probe Incorporated. Customer shall not remove any markings from the System, which identify Gen-Probe as the owner. Customer shall keep the System free from any and all liens, claims and encumbrances and shall not lease, sublease, transfer, sell, or assign the System. Customer does hereby make, constitute and appoint Gen-Probe as Customer's true and lawful attorney-in-fact for the sole purpose of executing and filing, in the name of Customer, a UCC-1 statement in favor of Gen-Probe covering the System.
10. **WARRANTY AND SERVICE.** Gen-Probe warrants that the Reagents shall meet the required performance specifications to perform the desired tests as described in the package inserts. Gen-Probe does not manufacture the System. The System is warranted through its manufacturers and such warranties extend to Gen-Probe's customers. ~~The extent of Gen-Probe's liability regarding the System and Customer's sole and exclusive remedy under this warranty is limited to the repair or replacement of any defective System, at Gen-Probe's option.~~ The foregoing System warranty shall not apply in the event that: (a) Customer has not used and maintained the System in accordance with the System operator's manual provided to Customer; (b) Customer has used the System with reagents and supplies not expressly authorized by Gen-Probe; (c) the System is repaired or altered by a party other than Gen-Probe without Gen-Probe's prior written consent; (d) Customer has installed commercial or non-System software on the System; or (e) the System has been subject to misuse, negligence, or accident. **THE FOREGOING WARRANTIES ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ARISING BY OPERATION OF LAW OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT AND THOSE ARISING FROM COURSE OF DEALING OR USAGE OR TRADE PRACTICE.**
11. **LICENSE.** The placement of the System by Gen-Probe shall constitute a license to use the System under U.S. Patent No. 6,846,456. Gen-Probe and Customer agree that the placement of the System by Gen-Probe shall not constitute an express or implied license under any other Gen-Probe patents to practice any patented assay method or to use any patented composition of matter or article of manufacture.
12. **MAINTENANCE AND REPAIR.** Customer agrees to maintain the System in good operating condition and assumes all risks of loss and damage to the System, except as covered in Section 10 (Warranty and Service). In the event of loss or damage, Gen-Probe reserves the right to inspect and service the System at any time.
13. **TERMINATION.** This Agreement will terminate at the end of the Contract Period, or earlier, as provided in Sections 3 (Reagent Price Adjustment) and 15 (Default).
14. **LIMITATION OF LIABILITY.** EXCEPT FOR PAYMENTS DUE PURSUANT TO SECTIONS 4 AND 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR COSTS INCURRED BY THE OTHER PARTY IN CONNECTION WITH THE USE OF THE SYSTEM OR REAGENTS BY CUSTOMER OR ANY OTHER PERSON UTILIZING THE SYSTEM OR REAGENTS, NOR SHALL GEN-PROBE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE REAGENTS OR SYSTEM. Such limitation is intended to apply without regard to whether such damages are claimed, asserted or brought in an action or claim sounding in tort or contract, or on the warranty, or under any other law or form of action.

15. **DEFAULT.** The occurrence of any of the following events shall constitute a default ("Default") by Customer: (a) non-payment when due of any amount payable by Customer in accordance with this Agreement; (b) Customer's failure to perform any covenant or condition of this Agreement; (c) Customer becomes insolvent or unable to pay debts as they mature; (d) Customer files for protection under any bankruptcy or similar laws or if any proceeding in bankruptcy, receivership or insolvency shall be commenced by or against Customer or its property; (e) Customer makes an assignment for the benefit of its creditors; or (f) if any substantial attachment or execution be levied on any of Customer's property. In the event of a Default hereunder, all indebtedness of Customer hereunder may, at the option of Gen-Probe and without demand or notice of any kind be declared and thereupon immediately become due and payable, and in addition to all other remedies, all of which are cumulative, Gen-Probe may (i) require Customer to return the System and make the System available to Gen-Probe at a place designated by Gen-Probe, and/or (ii) immediately terminate this Agreement. Gen-Probe shall be entitled to recover from Customer any and all expenses and damages which Gen-Probe sustains by reason of Default including, but not limited to, reasonable attorneys' fees and all expenses of repossession, removal, storing, and disposition of the System. The remedies and rights specified herein shall not be exclusive and shall be cumulative. The exercise or the non-exercise of any right or remedy shall not limit or prejudice Gen-Probe as to that right or remedy or as to any other rights or remedies provided by applicable law.
16. **CONFIDENTIALITY.** Customer acknowledges the existence of the trademarks, copyrights, patents, and other intellectual property rights relating to the use or subsisting in or in connection with the System including software, hardware, and other parts thereof in which Gen-Probe or a third party has an interest are, and shall remain, the sole property of Gen-Probe or the respective third party. Customer shall not at any time dispute Gen-Probe's ownership thereof. Customer shall hold in confidence all materials or information disclosed to it by Gen-Probe hereunder ("Confidential Information"). In addition to the foregoing, Gen-Probe Confidential Information includes the operator's manual, ~~the System price and payment terms~~. Customer agrees to take precautions to prevent the unauthorized disclosure or use of Confidential Information consistent with precautions used to protect its own confidential information, but in no event less than reasonable care. The obligations of Customer hereunder shall not apply to materials or information which (a) is now, or hereafter becomes, through no act or failure to act on the part of Customer, generally known or available; (b) is known by Customer at the time of receiving such information as evidenced by its records; (c) is hereafter furnished to Customer by a third party, as a matter of right and without restriction on disclosure; (d) is independently developed by Customer without any breach of this Agreement; or (e) is the subject of a written permission to disclose provided by Gen-Probe. Notwithstanding any other provision of this Agreement, disclosure of Confidential Information shall not be precluded if such disclosure: (i) is in response to a valid order of a court or other governmental body or is otherwise required by law; *provided, however*, that Customer shall first have given notice to Gen-Probe and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information; or (ii) is otherwise necessary to establish rights or enforce obligations under this Agreement, but only to the extent that any such disclosure is necessary.
17. **MISCELLANEOUS.** Headings and captions in this Agreement are for convenience only, do not form a part of this Agreement, and shall in no way affect its interpretation. Any

notification required shall be deemed to have been given either one (1) day after being given to an express overnight carrier with a reliable system for tracking delivery; or when sent by a confirmed facsimile with another copy sent by any other means specified in this paragraph; or three (3) business days after having been mailed postage prepaid by United States registered or certified mail. The mailing address for notice to either party will be the address shown on the front page of this Agreement. Either party may change its mailing address by notice as provided by this section. This Agreement (including the documents specifically referred to herein) contains the entire agreement between the parties. Customer acknowledges that there are no warranties or representations which have been made by Gen-Probe or any of its agents other than those expressly contained in this Agreement. If any action in law or equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which the party may be entitled. This Agreement cannot be changed except with the written consent of Gen-Probe. Any additional terms and conditions accompanying a subsequent Customer Purchase Order or other documentation must be agreed upon, in writing, and signed by both parties in order to be valid.

18. **ADDENDUM.** Gen-Probe and Customer acknowledge and agree that the Addendum attached hereto shall be deemed a part of this Agreement.

Rev. 8/31/05

**ADDENDUM  
TO  
REAGENT PURCHASE AND DTS SYSTEM LOAN AGREEMENT  
CONTRACT No. 103024400011109**

This Addendum to Reagent Purchase and DTS System Loan Agreement (“Addendum”) is attached to and made part of the Reagent Purchase and DTS System Loan Agreement between San Mateo County, as Customer, and Gen-Probe Sales and Service, Inc. dated June 17, 2009 (the “Agreement”). Intending to be legally bound hereby, Customer and Gen-Probe agree as follows:

1. All capitalized terms used in this Addendum without definition shall have the same meaning as given to them in the Agreement.
2. The Agreement is modified and amended as follows:
  - a. Section 3 (Reagent Price Adjustments) The second sentence in this section is deleted in its entirety.
  - b. Section 16 (Confidentiality) The following is deleted in its entirety from the last sentence in this section:

“...and shall have made a reasonable effort to obtain confidential treatment of such Confidential Information...”
  - c. Section 17 (Miscellaneous) The seventh sentence in this section is deleted in its entirety.

The following is added to the end of this section:

**Non-Discrimination and Other Requirements**

*Section 504 applies only to Contractors who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.

*General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.

*Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor’s equal employment policies shall be made available to County of San Mateo upon request.

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

- i) termination of this Agreement;

ii) disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;

iii) liquidated damages of \$2,500 per violation;

iv) imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

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

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

The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

added:

*Compliance with Contractor Employee Jury Service Ordinance.*

Contractor shall comply with the County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from the contractor, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with the contractor or that the contractor deduct from the employees regular pay the fees received for jury service.

3. Except as expressly provided herein, no other term, condition, provision, covenant or agreement of the Agreement is changed, modified, amended or altered, nor are any of Customer's rights or obligations under the Agreement, at law or equity, modified, waived, discharged or forgiven.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be duly executed by their authorized representatives as of the date first above written.

Gen-Probe Sales and Service, Inc.

\_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
Name: Brian B. Hansen  
Title: Vice President, North American Sales

ATTACHMENT

**Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, as Amended**

The undersigned (hereinafter called the "Contractor(s)") hereby agrees that it will comply with Section 504 of the Rehabilitation Act of 1973, as amended, all requirements imposed by the applicable DHHS regulation, and all guidelines and interpretations issued pursuant thereto.

The Contractor(s) gives/give this assurance in consideration of for the purpose of obtaining contracts after the date of this assurance. The Contractor(s) recognizes/recognize and agrees/agree that contracts will be extended in reliance on the representations and agreements made in this assurance. This assurance is binding on the Contractor(s), its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf of the Contractor(s).

The Contractor(s): (Check a or b)

- a. Employs fewer than 15 persons.
- b. Employs 15 or more persons and, pursuant to section 84.7 (a) of the regulation (45 C.F.R. 84.7 (a), has designated the following person(s) to coordinate its efforts to comply with the DHHS regulation.


Brian B. Hansen  
Name of 504 Person - Type or Print

Gen-Probe Sales & Service, Inc.  
Name of Contractor(s) - Type or Print

10210 Genetic Center Dr  
Street Address or P.O. Box

San Diego, CA 92121  
City, State, Zip Code

I certify that the above information is complete and correct to the best of my knowledge.

  
Signature

Vice President, North American Sales  
Title of Authorized Official

7/28/09  
Date

\*Exception: DHHS regulations state that:

"If a recipient with fewer than 15 employees finds that, after consultation with a disabled person seeking its services, there is no method of complying with (the facility accessibility regulations) other than making a significant alteration in its existing facilities, the recipient may, as an alternative, refer the handicapped person to other providers of those services that are accessible."

**County of San Mateo  
Contractor's Declaration Form**

**I. CONTRACTOR INFORMATION**

Contractor Name:	Gen-Probe Sales and Services, Inc.	Phone:	858-410-8988
Contact Person:	Allison Horgan Manager, Contracts	Fax:	800-288-3141
Address:	10210 Genetic Center Drive, San Diego, CA 92121		

**II. EQUAL BENEFITS** (check one or more boxes)

*Contractors with contracts in excess of \$5,000 must treat spouses and domestic partners equally as to employee benefits.*

- Contractor complies with the County's Equal Benefits Ordinance by:
  - offering equal benefits to employees with spouses and employees with domestic partners.
  - offering a cash equivalent payment to eligible employees in lieu of equal benefits.
- Contractor does not comply with the County's Equal Benefits Ordinance. (CMO waiver attached)
- Contractor is exempt from this requirement because:
  - Contractor has no employees, does not provide benefits to employees' spouses, or the contract is for \$5,000 or less.
  - Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to offer equal benefits when said agreement expires.

**III. NON-DISCRIMINATION** (check appropriate box)

- Finding(s) of discrimination have been issued against Contractor within the past year by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or other investigative entity. Please see attached sheet of paper explaining the outcome(s) or remedy for the discrimination.
- No finding of discrimination has been issued in the past year against the Contractor by the Equal Employment Opportunity Commission, Fair Employment and Housing Commission, or any other entity.

**IV. EMPLOYEE JURY SERVICE** (check one or more boxes)

*Contractors with original or amended contracts in excess of \$100,000 must have and adhere to a written policy that provides its employees living in San Mateo County up to five days regular pay for actual jury service in the County.*

- Contractor complies with the County's Employee Jury Service Ordinance.
- Contractor does not comply with the County's Employee Jury Service Ordinance.
- Contractor is exempt from this requirement because:
  - the contract is for \$100,000 or less.
  - Contractor is a party to a collective bargaining agreement that began on \_\_\_\_\_ (date) and expires on \_\_\_\_\_ (date), and intends to comply when the collective bargaining agreement expires.

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

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title