



GeneXpert® Agreement

TERMS AND CONDITIONS

1. **Agreement.** Customer and Cepheid (each a “Party” and collectively the “Parties”) agree that these Service Terms of Sale (“Terms”) apply to (a) any order from Customer that Cepheid accepts and (b) any written agreement with Cepheid that incorporates the Terms. If a separate written agreement with Cepheid does not apply to Customer’s order, then the Terms, Cepheid’s Sales Quote (“the Quote”), and Cepheid’s Sales Order form a contract between Customer and Cepheid (collectively “the Agreement”). The Agreement becomes effective when Cepheid accepts Customer’s order through a Sales Order. Cepheid rejects any terms from Customer that add to or differ from the Agreement’s terms.
2. **Term.** The term of the Agreement is from the “Start Date” to the “End Date” stated on the Quote (“the Term”).
3. **Applicable Service Plan.** Cepheid offers three categories of instrument service plans: Essential, Advantage, and Advantage Plus. The Quote identifies the service plan or plans purchased under the Agreement (collectively the “Applicable Service Plan”). Customers with GeneXpert Infinity systems must purchase Advantage Plus Service Plans.
4. **Invoices.** Customer must pay Cepheid the “Total Extended Price” stated on the applicable Sales Quote (“Sales Price”). Cepheid’s invoice will include the Sales Price and all applicable taxes. Cepheid will invoice Customer in advance at the beginning of the Term. Customer must pay Cepheid within 30 days of the “Invoice Date” on all undisputed invoices. If Customer fails to pay an undisputed invoice when due, Cepheid may (1) charge interest on the outstanding amount at the rate of 1.5% per month or the maximum amount allowed by law if less and (2) not perform any services under the Agreement. If Customer disputes the accuracy of any invoice in good faith, then it must notify Cepheid in writing within 30 days of receiving an invoice and include a detailed explanation of the dispute. The Parties will cooperate in good faith to resolve all invoice disputes within 30 days after Cepheid receives notice.
5. **Taxes.** Customer must pay all applicable taxes on the purchase of a service plan. If Customer claims any tax exemption, then it must annually provide Cepheid with a valid tax exemption certificate. If any federal, state, or local authority determines that a tax exemption certificate is not valid or that Customer owes taxes on the purchase of a service plan for any other reason, then Customer will be responsible for all owed taxes and will reimburse Cepheid for any costs, penalties, or interest caused by Customer’s failure to pay applicable taxes.
6. **Termination.**
 - 6.1. **Default.** Defaults occurs if: (a) a Party becomes insolvent, ceases to do business, or indicates that it will cease to do business during the Term; (b) bankruptcy or receivership proceedings are instituted by or against the Party; or (c) a Party materially breaches this Agreement and fails to cure such breach within 30 days after the non-breaching Party provides written notice of the breach to the other Party (each a “Default”). If one Party Defaults, the other Party may terminate this Agreement on written notice to the defaulting Party. If Cepheid terminates the Agreement because of Customer’s Default, Cepheid will retain all amounts paid in advance as a non-exclusive remedy for Customer’s Default.
 - 6.2. **Early Termination.** Either Party may terminate the Agreement before the end of the Term by providing the other Party with written notice at least 30 days before termination.



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- 6.3. **Termination Fee.** If Customer terminates the Agreement before the Term ends, then Customer must pay Cepheid a termination fee equal to the discounts provided to Customer, if any. Cepheid will return the prorated balance for advance payments, if any, to Customer. For example, if Customer paid Cepheid \$90,000 in advance for a four-service plan, which includes a 10% discount off the list price of \$100,000, and terminates early at the end of year two, then Customer will owe Cepheid \$10,000 for the termination fee (10% of \$100,000). Cepheid will retain \$10,000 and return the remaining prorated balance of \$35,000 to Customer (\$45,000 for years three and four less \$10,000).
7. **Covered Instruments.** During the Term, Cepheid will provide the maintenance, repair, and support services specified in the Agreement on the instruments identified by serial number on the Quote (collectively "Covered Instruments"). Covered Instruments do not include any consumables or instrument accessories, such as universal power supply devices or printers.
8. **Scope of Coverage.** This Agreement only covers repairs of defects arising from Customer's use of a Covered Instrument under normal conditions in compliance with Cepheid's operator manual. Coverage under this Agreement does not include repairing malfunctions or failures resulting from: operating a Covered Instrument in an unsuitable environment, using a Covered Instrument inconsistent with its design or Cepheid's published specifications, use of unauthorized attachments, acts of nature, unusual physical or electrical stress, unauthorized modifications, unauthorized repairs done by Customer or anyone other than Cepheid, or misuse, abuse, or neglect of a Covered Instrument (collectively "Excluded Repairs"). Excluded Repairs may result in additional charges. Cepheid will notify Customer in writing concerning any Excluded Repairs and will provide a quote with the costs to perform the Excluded Repairs. Cepheid will not proceed with any Excluded Repairs unless Customer approves those additional costs in writing.
9. **Telephone Technical Support.** During the Term, except for holidays, Cepheid will provide technical phone support for Covered Instruments every day at any time. Customer may contact Cepheid's technical support personnel at +1-888-838-3222 or by opening a ticket online. Customer must connect a Covered Instrument to the internet for web-based support. Cepheid will prioritize service calls as follows: (1) Advantage Plus Service Plan calls, (2) Standard and Essential Service Plan calls, and (3) service calls from customers without active service agreements. If Cepheid cannot repair a Covered Instrument remotely, then Cepheid will repair the instrument following the procedures below.
10. **Instrument Repair.** If Cepheid determines that an onsite visit is necessary to repair a Covered Instrument, then the Parties will schedule a mutually acceptable time during a business day from 8:00 am to 5:00 pm local time. After Cepheid determines that an onsite visit is necessary, a field service engineer will be available to perform onsite repairs within two business days for Advantage Plus Service Plans and within four business days for Standard and Essential Service Plans. These response times may be longer for Covered Instruments installed in remote areas. For Advantage Plus Service Plans, Cepheid will also perform onsite repairs to Covered Instruments on the weekends and during holidays if a Covered Instrument is down and cannot produce any diagnostic test results on any module. Cepheid may use new or refurbished parts to repair Covered Instruments. All replaced parts become the property of Cepheid. Before Cepheid performs any on-site repairs, Customer must (a) notify Cepheid of any potential on-site hazards and (b) ensure that Covered Instruments are safe to handle.
11. **Instrument Replacements.** If Cepheid cannot repair a damaged Covered Instrument or decides not to repair a Covered Instrument, then it will ship Customer a new or refurbished replacement instrument at Cepheid's expense, and Customer will return the damaged Covered Instrument to Cepheid as required



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below. For Customer-owned Covered Instruments, Customer will receive title to any replacement instrument, and Cepheid will receive title to any Covered Instrument that cannot be repaired. For Cepheid-owned Covered Instruments, Cepheid will retain title to any replacement instrument. Any new replacement instrument will become a Covered Instrument for the remaining Term. The Parties will cooperate in good faith to execute any additional documents necessary to transfer titles to instruments under this section.

12. **Instrument Returns.** If Cepheid requires Customer to return a Covered Instrument for repair, Customer must provide a completed decontamination form from Cepheid with any item shipped to Cepheid, which lists all potential biohazards that the Covered Instruments have been exposed to or analyzed. Cepheid will pay for the shipping costs to return Covered Instruments to Cepheid.
13. **Instrument Loans.** For Advantage Plus Service Plans, Cepheid will loan at no additional cost a comparable instrument (“Loaner Instrument”) to Customer if a Covered Instrument cannot operate for more than three consecutive days during the Term. The Loaner Instrument may be multiple smaller instruments if the Covered Instrument is an Infinity system. The Loaner Instrument will be available for Customer’s use at the location of the inoperable Covered Instrument from the time of installation until the Covered Instrument is repaired (“Loan Period”). During the Loan Period, the Loaner Instrument will be a Covered Instrument. Cepheid owns the Loaner Instrument, and Customer has no rights to the Loaner Instrument except as stated in this clause. Customer must return the Loaner Instrument to Cepheid within 30 days after the end of the Loan Period using the same instrument return procedures as stated above.
14. **Annual Preventative Maintenance.**
 - 14.1. **Xpert Check.** Cepheid will ship one Xpert Check kit to Customer for each Covered Instrument once every 12 months during the Term. The Xpert Check kit includes five test cartridges, a fan filter, optics brush, a CD with test software, instructions, and a blank CD for saving results where an internet connection is not possible. The Xpert Check will generate a Summary Report that details the working condition of the instrument. For Advantage Plus and Essential Service Plans, Cepheid will schedule an on-site visit with Customer to perform the Xpert Check at a mutually acceptable time once every 12 months during the Term. If the Xpert Check fails, then Cepheid will repair the Covered Instrument.
 - 14.2. **Preventative Maintenance Deliverables.** Cepheid will also perform the following annual preventative maintenance on the Covered Instruments: (a) replace worn module ejectors; (b) lubricate moving parts for GeneXpert Infinity Systems only; (c) replace fan filters; (d) brush clean module optics; and (e) replace automation batteries if necessary for GeneXpert Infinity System only.
15. **Software Updates.** “Software Update” means a revision to Cepheid’s software installed on the Covered Instruments with slight modifications or added capability (e.g., an update from version 1.0 to 1.1). Cepheid will install available Software Updates on the Covered Instruments when it performs the annual preventative maintenance described above for Advantage Plus and Essential Service Plans. Customers with Standard Service Plans are responsible for coordinating Software Updates with Cepheid when the next on-site maintenance visit occurs. Software Updates do not include major revisions or upgrades to Cepheid’s software (e.g., an update from 1.0 to 2.0) or any updates to third-party software.
16. **Advantage Plus Wellness Visit.** Customers with an Advantage Plus Service Plan may request a wellness visit once every 12 months during the Term. For Wellness visits, Customer may request on-site preventative maintenance training, additional user training, and instrument evaluation.



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17. **Uptime Guarantee.** For Advantage Plus Service Plan, GeneXpert Infinity Systems will have an Uptime Percentage of at least 98 during each Measurement Period (“Uptime Guarantee”).

17.1. **Definitions.**

- a. Measurement Period means each six-month period during the Term starting when a Covered Instrument can generate a diagnostic test result after installation. If the last Measurement Period in the Term is less than six months, then the Uptime Percentage calculations will be prorated to reflect the shorter period.
- b. Base Hours means 24 hours multiplied by each day during the Measurement Period.
- c. Downtime Hours means the amount of time that a Covered Instrument cannot generate a diagnostic test result during Base Hours caused by (a) a defect in Cepheid’s design, manufacturing, or materials or (b) Cepheid’s failure to perform instrument repairs as required by the Agreement. Downtime Hours start when Customer notifies Cepheid that a Covered Instrument cannot generate a diagnostic test result and end when a Covered Instrument can generate a diagnostic test result.
- d. Uptime Hours means the difference between Downtime Hours and Base Hours for each Measurement Period.
- e. Uptime Percentage is calculated by dividing Uptime Hours by Base Hours for each Measurement Period and multiplying the result by 100. For example, if Uptime Hours equals 98 and Base Hours equals 100, then the Uptime Percentage will equal 98.

17.2. **Remedy.** The Term will be extended for an additional month at no cost to Customer for each Measurement Period when a Covered Instrument fails to meet the Uptime Guarantee. These Term extensions will only apply to the Covered Instrument that failed to meet the Uptime Guarantee and not to all Covered Instruments under the Agreement. This clause provides Customer’s exclusive remedy for any Covered Instrument that fails to meet the Uptime Guarantee.

18. **Limited Repair Warranty.** Cepheid will perform all repair work according to applicable regulatory and industry standards and warrants that all replacement parts will be free from defects in workmanship for the longer of 90 days from the time of repair or the end of the Term. This limited repair warranty only extends to Customer. No other warranties apply to the services that Cepheid provides under this Agreement.

19. **Limitation of Liability.** *The Parties will only have liability for damages that directly and naturally result from a breach of the Agreement and are reasonably foreseeable at the time of breach. The Parties waive all other forms of damages for any claim concerning the Agreement. Cepheid’s maximum aggregate liability will not exceed, under any circumstances, the amount that Customer paid to Cepheid under the Agreement when the cause of liability occurred.*

20. **Confidential Information and Customer Data.**

20.1. If Cepheid discloses to Customer any non-public information, including future Cepheid products, software, and services, then Customer will keep that information confidential and not disclose it to any third parties. If Customer provides Cepheid with any feedback regarding any Cepheid product, software, or service, Cepheid may use any such feedback for any purpose, without notice, restriction, or compensation.



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- 20.2. Customer must remove or delete all data from the Covered Instruments before returning to Cepheid. Cepheid will delete any data remaining on returned Covered Instruments and will not provide Customer with a copy of the deleted data. *Cepheid will not have any responsibility or liability for data remaining on returned Covered Instruments.*
- 20.3. If Customer provides Cepheid with “protected health information” as defined in 45 C.F.R. § 160.103, the Parties agree to the Business Associate Agreement available at (https://www.cepheid.com/en_US/systems/business-associates-agreement).
- 20.4. This clause survives the Agreement’s termination.
21. **Disclosure Requirements.** The Parties intend that any discounts, rebates, or other price reductions (collectively “Discounts”) that Customer receives from Cepheid comply with the federal Anti-Kickback Statute at 42 U.S.C. § 1320a-7b and the safe harbor provisions at 42 C.F.R. § 1001.952. Customer will accurately report all Discounts if legally required, including the allocation of Discounts across products and services. At Customer's request, Cepheid will provide Customer with additional information regarding the Discounts, including the allocation of Discounts across Cepheid’s products and services if applicable.
22. **Uncontrollable Events.** Neither Party will breach the Agreement or have any liability if an event beyond a Party’s reasonable control prevents or delays its performance under the Agreement.
23. **Governing Law and Venue.** Delaware law governs the Agreement. A party may only file a lawsuit concerning the Agreement in a state or federal court in Delaware.
24. **Assignment.** A Party may only transfer its rights or obligations under the Agreement with the other Party’s written approval. The Parties will agree to reasonable requests for assignment.
25. **Third-Party Beneficiaries.** The Agreement provides no rights or remedies to any third party unless specifically identified in a separate written agreement.
26. **Modification.** The Parties may only modify the Agreement through a written amendment signed by the Parties.
27. **Waiver.** No waiver under the Agreement will be effective unless in writing and signed by the party granting the waiver. A waiver granted on one occasion will not operate as a waiver on other occasions.
28. **Severability.** Each provision of the Agreement must be interpreted in a way that makes it valid under the Governing Law. If any provision is held invalid, the rest of the Agreement will remain in full effect.
29. **Notices.** Notices under the Agreement must be in writing and (a) hand-delivered or (b) sent by an overnight courier with proof of delivery and all fees prepaid. Customer must send any notice to Cepheid at 904 Caribbean Drive, Sunnyvale, CA 94089, with a courtesy copy to Cepheid’s Legal Department at the same address. Cepheid must send any notice to Customer at the “Sold To” address on the Quote.
30. **Complete Agreement.** The Agreement is final, contains the Parties’ entire understanding concerning the subject matter of the Agreement, and replaces all other written or oral agreements between the Parties. The



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Parties are not relying on any statement outside the Agreement. The Parties may not use any statement outside the Agreement to change the Agreement's terms.