



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER  
**LBS90082**

PAGE  
**1**

ADDRESS CORRESPONDENCE TO ATTENTION OF:  
**ROBERTA WAGNER**  
**304-558-0067**

**VENDOR**  
 \*909124400      408-400-8313  
**CEPHEID**  
**904 E CARRIBBEAN DR**  
  
**SUNNYVALE CA 94089-1189**

**SHIP TO**  
**HEALTH AND HUMAN RESOURCES**  
**BPH - LABORATORY SERVICES**  
  
**167-ELEVENTH AVENUE**  
**SOUTH CHARLESTON, WV**  
**25303                      304-558-3530**

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/25/2008	SEE ATTACHED	BEST WAY	SHIP POINT	PREPAY & ADD

BID OPENING DATE: **12/18/2008**      BID OPENING TIME: **01:30PM**

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		493-08	\$ 29,419	Karen Braden
<p>REAL-TIME POLYMERASE CHAIN REACTION (QPCR) INSTRUMENT</p> <p>REQUEST FOR QUOTATION</p> <p>TO PROVIDE A REAL-TIME POLYMERASE CHAIN REACTION (QPCR) INSTRUMENT CAPABLE OF MULTIPLEXING, ROCHE APPLIED SCIENCE LIGHTCYCLER 2.0 INSTRUMENT, ITEM #03531414201 - DESKTOP OR EQUAL, PER THE ATTACHED SPECIFICATIONS.</p> <p>EXHIBIT 3</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICES SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER ORDER.</p> <p>INQUIRIES:</p> <p>WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON TUESDAY 12/09/2008. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER, OR EMAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED VERBALLY. IF POSSIBLE EMAIL QUESTIONS ARE PREFERRED. ADDRESS INQUIRIES TO:</p> <p>ROBERTA WAGNER</p>						

RECEIVED  
 08 DEC 17 AM 11:08  
 PURCHASING DIVISION  
 STATE OF WV

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE: *[Signature]*      TELEPHONE: **919.802.4308**      DATE: **12/10/08**

TITLE: **SR. SALES REP**      FEIN: **77-0441625**      ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'

## GENERAL TERMS & CONDITIONS REQUEST FOR QUOTATION (RFQ) AND REQUEST FOR PROPOSAL (RFP)

1. Awards will be made in the best interest of the State of West Virginia.
2. The State may accept or reject in part, or in whole, any bid.
3. All quotations are governed by the *West Virginia Code* and the *Legislative Rules* of the Purchasing Division.
4. Prior to any award, the apparent successful vendor must be properly registered with the Purchasing Division and have paid the required \$125 fee.
5. All services performed or goods delivered under State Purchase Order/Contracts are to be continued for the term of the Purchase Order/Contracts, contingent upon funds being appropriated by the Legislature or otherwise being made available. In the event funds are not appropriated or otherwise available for these services or goods, this Purchase Order/Contract becomes void and of no effect after June 30.
6. Payment may only be made after the delivery and acceptance of goods or services.
7. Interest may be paid for late payment in accordance with the *West Virginia Code*.
8. Vendor preference will be granted upon written request in accordance with the *West Virginia Code*.
9. The State of West Virginia is exempt from federal and state taxes and will not pay or reimburse such taxes.
10. The Director of Purchasing may cancel any Purchase Order/Contract upon 30 days written notice to the seller.
11. The laws of the State of West Virginia and the *Legislative Rules* of the Purchasing Division shall govern all rights and duties under the Contract, including without limitation the validity of this Purchase Order/Contract.
12. Any reference to automatic renewal is hereby deleted. The Contract may be renewed only upon mutual written agreement of the parties.
13. **BANKRUPTCY:** In the event the vendor/contractor files for bankruptcy protection, this Contract may be deemed null and void, and terminated without further order.
14. **HIPAA BUSINESS ASSOCIATE ADDENDUM:** The West Virginia State Government HIPAA Business Associate Addendum (BAA), approved by the Attorney General, and available online at the Purchasing Division's web site (<http://www.state.wv.us/admin/purchase/vrc/hipaa.htm>) is hereby made part of the agreement. Provided that, the Agency meets the definition of a Cover Entity (45 CFR §160.103) and will be disclosing Protected Health Information (45 CFR §160.103) to the vendor.
15. **WEST VIRGINIA ALCOHOL & DRUG-FREE WORKPLACE ACT:** If this Contract constitutes a public improvement construction contract as set forth in Article 1D, Chapter 21 of the West Virginia Code ("The West Virginia Alcohol and Drug-Free Workplace Act"), then the following language shall hereby become part of this Contract: "The contractor and its subcontractors shall implement and maintain a written drug-free workplace policy in compliance with the West Virginia Alcohol and Drug-Free Workplace Act, as set forth in Article 1D, Chapter 21 of the West Virginia Code. The contractor and its subcontractors shall provide a sworn statement in writing, under the penalties of perjury, that they maintain a valid drug-free work place policy in compliance with the West Virginia and Drug-Free Workplace Act. It is understood and agreed that this Contract shall be cancelled by the awarding authority if the Contractor: 1) Fails to implement its drug-free workplace policy; 2) Fails to provide information regarding implementation of the contractor's drug-free workplace policy at the request of the public authority; or 3) Provides to the public authority false information regarding the contractor's drug-free workplace policy."

---

### INSTRUCTIONS TO BIDDERS

1. Use the quotation forms provided by the Purchasing Division.
2. **SPECIFICATIONS:** Items offered must be in compliance with the specifications. Any deviation from the specifications must be clearly indicated by the bidder. Alternates offered by the bidder as **EQUAL** to the specifications must be clearly defined. A bidder offering an alternate should attach complete specifications and literature to the bid. The Purchasing Division may waive minor deviations to specifications.
3. Complete all sections of the quotation form.
4. Unit prices shall prevail in case of discrepancy.
5. All quotations are considered F.O.B. destination unless alternate shipping terms are clearly identified in the quotation.
6. **BID SUBMISSION:** All quotations must be delivered by the bidder to the office listed below prior to the date and time of the bid opening. Failure of the bidder to deliver the quotations on time will result in bid disqualifications: Department of Administration, Purchasing Division, 2019 Washington Street East, P.O. Box 50130, Charleston, WV 25305-0130



State of West Virginia  
 Department of Administration  
 Purchasing Division  
 2019 Washington Street East  
 Post Office Box 50130  
 Charleston, WV 25305-0130

# Request for Quotation

RFQ NUMBER
LBS90082

PAGE
2

ADDRESS CORRESPONDENCE TO ATTENTION OF:
ROBERTA WAGNER 804-558-0067

REPLY TO

\*909124400      408-400-8313  
 CEPHEID  
 904 E CARRIBBEAN DR  
 SUNNYVALE CA 94089-1189

SHIP TO

HEALTH AND HUMAN RESOURCES  
 BPH - LABORATORY SERVICES  
 167-ELEVENTH AVENUE  
 SOUTH CHARLESTON, WV  
 25303      304-558-3530

DATE PRINTED	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
11/25/2008				

BID OPENING DATE: 12/18/2008      BID OPENING TIME 01:30PM

LINE	QUANTITY	UOP	CAT NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
<p>DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25305            FAX: 304-558-4115            EMAIL: ROBERTA.A.WAGNER@WV.GOV</p> <p>THE MODEL/BRAND/SPECIFICATIONS NAMED HEREIN ESTABLISH THE ACCEPTABLE LEVEL OF QUALITY ONLY AND ARE NOT INTENDED TO REFLECT A PREFERENCE OR FAVOR ANY PARTICULAR BRAND OR VENDOR. VENDORS WHO ARE BIDDING ALTERNATES SHOULD SO STATE AND INCLUDE PERTINENT LITERATURE AND SPECIFICATIONS. FAILURE TO PROVIDE INFORMATION FOR ANY ALTERNATES MAY BE GROUNDS FOR REJECTION OF THE BID. THE STATE RESERVES THE RIGHT TO WAIVE MINOR IRREGULARITIES IN BIDS OR SPECIFICATIONS IN ACCORDANCE WITH SECTION 148-1-4 (F) OF THE WEST VIRGINIA LEGISLATIVE RULES AND REGULATIONS.</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION            PURCHASING DIVISION            BUILDING 15            2019 WASHINGTON STREET, EAST            CHARLESTON, WV 25305-0130</p> <p>PLEASE NOTE: A CONVENIENCE COPY WOULD BE APPRECIATED.</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

WHEN RESPONDING TO RFQ, INSERT NAME AND ADDRESS IN SPACE ABOVE LABELED 'VENDOR'



## RFQ #LBS90082

The WV Office of Laboratory Services (OLS) is requesting to purchase a real-time polymerase chain reaction (qPCR) instrument capable of multiplexing, Roche Applied Science LightCycler 2.0 Instrument, Item #03531414201 – Desktop, or equal. This instrument will be used in the Microbiology and Threat Preparedness Sections and will serve as a backup and surge capacity instrument. OLS currently utilizes Roche LightCycler equipment for testing purposes. The LightCycler technology is proprietary to Roche Applied Science. This unit must be an exact duplicate of our existing equipment or totally compatible with the existing equipment. All of our current protocols are written for the sole use of this instrument. Vendors bidding on alternate equipment must provide pertinent literature/specifications when submitting bid.

### SYSTEM COMPONENTS AND SPECIFICATIONS:

Selected vendor must provide an instrument containing **ALL** of these required specifications:

- ▶ Must be capable of performing 30 cycles in less than 35 minutes for 20 $\mu$ L samples.
- ▶ Must have a maximum temperature ramping time of 20 $^{\circ}$ C/second.
- ▶ The instrument must be approximately 30cmx45cmx30cm and weigh no more than 15kg.
  - Size Min = 20cmx30cmx20cm
  - Size Max = 50cmx65cmx50cm
  - Weight Min = 10kg
  - Weight Max = 25kg
- ▶ LightCycler 2.0 sample carousel or equal.
  - Must have custom PEEK plastic design, or equal.
  - Must be removable for easy loading, cleaning, and sterilization.
  - Must be autoclavable.
  - Must accommodate 32 cuvettes.
- ▶ LightCycler Cuvettes or equal.
  - Must include 96 cuvettes capable of holding 10 $\mu$ L-20 $\mu$ L or 50 $\mu$ L-100 $\mu$ L of sample.
  - Must include 96 caps for sealing sample reservoir.
- ▶ LightCycler Cooling Block/Adapters or equal.
  - Cooling block must be machined aluminum.

- Must include 32 machined aluminum centrifuge adapters for standard tabletop microfuges.
- Must include sample spacing that accommodates 8-channel pipettors.
- ▶ Microvolume Fluorimeter or equal.
  - Must be Rodenstock optics or equal.
  - Must include 6 detection channels (individual PMT's) – 530nm, 560nm, 610nm, 640nm, 670nm, and 705nm.
  - Must include a stepper motor.
- ▶ Motor
  - Must be low-maintenance.
  - Must be belt-driven.
  - Must have the precision positioning of samples over optics.
- ▶ Heating Chamber
  - Must have heating coil.
  - Must have a high speed fan assembly.
  - Must have cooling body.
- ▶ LightCycler Software, version 4.0 or equal.
  - Must include application specific macros.
  - Must include LightCycler Data File Editor and Manager or equal.
  - Must include Relative Quantification Software or equal.
  - Must be capable of performing a Melting Curve Analysis or equal, for mutation detection and /or product verification.
  - Must include 4-level User Management, or equal.
  - Must include Absolute Quantification or equal, with external standards (with or without internal control).
  - Must include Qualitative Analysis or equal (with or without internal control).
  - Must be able to produce customizable reports.
  - Must be backwards compatible with LightCycler software version 3.x or equal.
- ▶ Light Source
  - Must be maintenance free LED.
- ▶ Computer, desktop
  - PC must have these minimum requirements:
    - 1 GHz Pentium.
    - 17" SVGA monitor.
    - 256MB RAM.
    - 20GB hard drive.

- Soundcard.

**SERVICE WARRANTY REQUIREMENTS:**

Must include at least one year equipment warranty to include parts and labor and must be provided at no additional cost.

Computer must be included in warranty.

A technical assistance hotline must be available for the hardware and software.

The selected vendor must respond to requests for repairs within 48 hours to schedule repairs or arrange for replacement.

Any available extended warranty (coverage beyond the initial warranty period) coverage must be listed separately on provided quote.

**INSTALLATION AND TRAINING REQUIREMENTS:**

The selected vendor must agree to provide necessary support and assistance during instrument setup. The vendor is not required to be on the premises for installation.

**SHIPPING AND DELIVERY REQUIREMENTS:**

Shipping terms to be FOB Destination, Prepaid unless vendor states differently when submitting quotation.

If shipping costs are incurred, they must be included as a separate line item and part of the total cost of the equipment.

Equipment must be delivered within 30 days of approved purchase order.

RFQ LBS90082 - COST SHEET

Bidders shall provide a cost for the following:

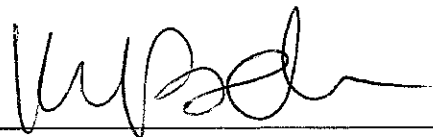
Roche Applied Science LightCycler 2.0 Instrument System (Desktop),	Item	#03531414201,	or	equal
\$ <del>29,419</del>				

equal item:

Cepheid SmartCycler II Desktop System (SC1600)  
 Item # SC2500N1-1. Price includes freight.  
 (see quote)

extended warranty/SERVICE is: \$5,290.00

The award will be made to the vendor with the lowest overall total cost of the equipment which meets all requested specifications and requirements.

  
 \_\_\_\_\_  
 Vendor Signature

12/10/08  
 \_\_\_\_\_  
 Date



STATE OF WEST VIRGINIA  
Purchasing Division

**PURCHASING AFFIDAVIT**

**VENDOR OWING A DEBT TO THE STATE:**

*West Virginia Code §5A-3-10a* provides that: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate.

**PUBLIC IMPROVEMENT CONTRACTS & DRUG-FREE WORKPLACE ACT:**

*West Virginia Code §21-1D-5* provides that: Any solicitation for a public improvement construction contract shall require each vendor that submits a bid for the work to submit at the same time an affidavit that the vendor has a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the West Virginia Code. A public improvement construction contract may not be awarded to a vendor who does not have a written plan for a drug-free workplace policy in compliance with Article 1D, Chapter 21 of the West Virginia Code and who has not submitted that plan to the appropriate contracting authority in timely fashion. For a vendor who is a subcontractor, compliance with Section 5, Article 1D, Chapter 21 of the West Virginia Code may take place before their work on the public improvement is begun.

**ANTITRUST:**

In submitting a bid to any agency for the state of West Virginia, the bidder offers and agrees that if the bid is accepted the bidder will convey, sell, assign or transfer to the state of West Virginia all rights, title and interest in and to all causes of action it may now or hereafter acquire under the antitrust laws of the United States and the state of West Virginia for price fixing and/or unreasonable restraints of trade relating to the particular commodities or services purchased or acquired by the state of West Virginia. Such assignment shall be made and become effective at the time the purchasing agency tenders the initial payment to the bidder.

I certify that this bid is made without prior understanding, agreement, or connection with any corporation, firm, limited liability company, partnership or person or entity submitting a bid for the same materials, supplies, equipment or services and is in all respects fair and without collusion or fraud. I further certify that I am authorized to sign the certification on behalf of the bidder or this bid.

**LICENSING:**

Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State's Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

**CONFIDENTIALITY:**

The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency's policies, procedures and rules. Vendors should visit [www.state.wv.us/admin/purchase/privacy](http://www.state.wv.us/admin/purchase/privacy) for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and is in compliance with the requirements as stated.

Vendor's Name: Cepheid / KAREN BRADEN

Authorized Signature: [Signature] Date: 12/10/08

# State of West Virginia VENDOR PREFERENCE CERTIFICATE

Certification and application\* is hereby made for Preference in accordance with *West Virginia Code*, §5A-3-37. (Does not apply to construction contracts). *West Virginia Code*, §5A-3-37, provides an opportunity for qualifying vendors to request (at the time of bid) preference for their residency status. Such preference is an evaluation method only and will be applied only to the cost bid in accordance with the *West Virginia Code*. This certificate for application is to be used to request such preference. The Purchasing Division will make the determination of the Resident Vendor Preference, if applicable.

**1. Application is made for 2.5% resident vendor preference for the reason checked:**

- Bidder is an individual resident vendor and has resided continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
- Bidder is a partnership, association or corporation resident vendor and has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or 80% of the ownership interest of Bidder is held by another individual, partnership, association or corporation resident vendor who has maintained its headquarters or principal place of business continuously in West Virginia for four (4) years immediately preceding the date of this certification; or,
- Bidder is a nonresident vendor which has an affiliate or subsidiary which employs a minimum of one hundred state residents and which has maintained its headquarters or principal place of business within West Virginia continuously for the four (4) years immediately preceding the date of this certification; or,

**2. Application is made for 2.5% resident vendor preference for the reason checked:**

- Bidder is a resident vendor who certifies that, during the life of the contract, on average at least 75% of the employees working on the project being bid are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

**3. Application is made for 2.5% resident vendor preference for the reason checked:**

- Bidder is a nonresident vendor employing a minimum of one hundred state residents or is a nonresident vendor with an affiliate or subsidiary which maintains its headquarters or principal place of business within West Virginia employing a minimum of one hundred state residents who certifies that, during the life of the contract, on average at least 75% of the employees or Bidder's affiliate's or subsidiary's employees are residents of West Virginia who have resided in the state continuously for the two years immediately preceding submission of this bid; or,

**4. Application is made for 5% resident vendor preference for the reason checked:**

- Bidder meets either the requirement of both subdivisions (1) and (2) or subdivision (1) and (3) as stated above; or,

**5. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

- Bidder is an individual resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard and has resided in West Virginia continuously for the four years immediately preceding the date on which the bid is submitted; or,

**6. Application is made for 3.5% resident vendor preference who is a veteran for the reason checked:**

- Bidder is a resident vendor who is a veteran of the United States armed forces, the reserves or the National Guard, if, for purposes of producing or distributing the commodities or completing the project which is the subject of the vendor's bid and continuously over the entire term of the project, on average at least seventy-five percent of the vendor's employees are residents of West Virginia who have resided in the state continuously for the two immediately preceding years

Bidder understands if the Secretary of Revenue determines that a Bidder receiving preference has failed to continue to meet the requirements for such preference, the Secretary may order the Director of Purchasing to: (a) reject the bid; or (b) assess a penalty against such Bidder in an amount not to exceed 5% of the bid amount and that such penalty will be paid to the contracting agency or deducted from any unpaid balance on the contract or purchase order.

By submission of this certificate, Bidder agrees to disclose any reasonably requested information to the Purchasing Division and authorizes the Department of Revenue to disclose to the Director of Purchasing appropriate information verifying that Bidder has paid the required business taxes, provided that such information does not contain the amounts of taxes paid nor any other information deemed by the Tax Commissioner to be confidential.

Under penalty of law for false swearing (*West Virginia Code*, §61-5-3), Bidder hereby certifies that this certificate is true and accurate in all respects; and that if a contract is issued to Bidder and if anything contained within this certificate changes during the term of the contract, Bidder will notify the Purchasing Division in writing immediately.

Bidder: Cepheid / KAREN BRADEN Signed: [Signature]  
 Date: 12/10/08 Title: SR - SALES Representative

\*Check any combination of preference consideration(s) indicated above, which you are entitled to receive



QUOTATION

Quote Number: Q9654
Quote Date: 12/12/2008
Quote Valid to: 12/30/2008
Payment Terms: Net30
FOB Point: Ship Point
Sales Rep: Karen Braden

From: Cepheid
904 Caribbean Drive
Sunnyvale, CA 94089-1302
Telephone: 888-838-3222
eFax: 408-716-2840

Quote To: Roberta Wagner
State of West Virginia Health & Human Services
167 Eleventh Avenue
South Charleston, WV, 25303
304-558-0067
BID # LBS90082

Table with 5 columns: Line, Part Number, Description, Quantity, Unit Price, Total. Contains items 1 (SMARICYCLER SYSTEM), 2 (SERVICE CONTRACT), and S&H (FREIGHT CHARGES).

Quotation Total: \$34,709.00

Please fax purchase order to 408-716-2840.
For any questions, please call 888-838-3222.

Approved by: Steve Marriot
Steve Marriot, Senior Director, Customer & Instrument Service

Date: \_\_\_\_\_

## CEPHEID SALES AGREEMENT

**PURCHASER'S TERMS:** Any other document provided by Purchaser, INCLUDING OTHER TERMS AND CONDITIONS SUBMITTED WITH ANY PURCHASE ORDER, and not specifically referenced in this agreement or expressly agreed to in writing shall be of no effect. This agreement is binding unless an agreement modification is submitted and mutually approved by Purchaser and CEPHEID. This agreement is valid for a period of 12 months from the date of final acceptance.

**ACCEPTANCE OF PURCHASE ORDERS:** Purchase Orders are binding only upon acceptance by Cepheid. Cepheid will only accept Purchase Orders that are issued in conformance with the provisions of this Sales Agreement (and attached Quotation as appropriate). Upon acceptance of a Purchase Order, this Sales Agreement (and attached Quotation as appropriate) and such accepted Purchase Order shall constitute a contract between the Purchaser and Cepheid.

**PRICE:** The sales price(s) for the Products will be the listed or posted price(s) of Cepheid in effect at the time of shipment, or the price stated in a written Quotation provided by Cepheid. Cepheid's quotations are subject to change at any time prior to acceptance of an order and expire sixty (60) days from the date of this Sales Agreement. The reasonable cost of packing, crating, shipping, and insurance are prepaid and will be added to the invoice. Where applicable, the Purchaser will pay directly all import duties. Price(s) do not include state or federal taxes, when applicable. Taxes will be added to the invoice as separate line items.

**DELIVERY:** Products will be packed in Cepheid's standard shipping packages and shipped by method and carrier to be selected by Cepheid, unless otherwise specified otherwise by Cepheid. Cepheid will use reasonable effort to effect shipment of the Products on or before quoted shipment dates; however, Cepheid shall not be liable for any delay or failure in delivery where such delay or failure results from any cause beyond Cepheid's control, including but not limited to, strike, boycott, embargo, or government regulation. Cepheid may make deliveries in installments, and each installment shall be deemed to be a separate sale, for which a separate invoice will be rendered by Cepheid. Cepheid shall also have the right, to the extent necessary in Cepheid's reasonable judgment, to apportion fairly among its various Customers in a manner deemed equitable by Cepheid, the Products then available for delivery.

**TITLE AND RISK OF LOSS:** Title and risk of loss with respect to all Products except software, and risk of loss with respect to software, shall pass from Cepheid to the Purchaser upon delivery. Delivery shall be deemed made upon transfer of possession to a common carrier F.O.B. origin.

**ACCEPTANCE OF PRODUCTS:** Purchaser shall inspect all Products within 30 days of receipt thereof, and may reject any Product that is defective provided that (i) it is (or has been) a standard product offered by Cepheid, and (ii) it has not been used, abused, or damaged by the Purchaser or Purchaser's agents. Any Product not properly and timely rejected by the Purchaser shall be deemed accepted. To reject a Product, Purchaser must notify Cepheid in writing within 30 days of receipt of the Product, obtain a Return Material Authorization number, and promptly return the rejected Product to Cepheid, freight collect. Cepheid shall promptly repair or replace the rejected Product with conforming Product.

**PAYMENT TERMS:** Payment terms are cash on delivery, except where Purchaser has established and maintained open account credit to Cepheid's satisfaction. Cepheid reserves the right to require alternative payment mechanisms, including without limitation, Sight Draft, Letter of Credit, or Payment in Advance. Payment terms for sales on open account are net thirty (30) days from date of Cepheid's invoice to Purchaser. Purchaser's obligation to pay for Products is not conditioned on Purchaser's inspection of the Products. Any invoiced amount which is not paid when due shall bear a late charge at the rate of one and one-half percent (1-1/2%) per month.

**PURCHASER'S FINANCIAL CONDITION:** Cepheid's obligations under this Sales Agreement are subject to Cepheid's approval at all times of Purchaser's financial condition. If the financial condition of Purchaser at any time becomes unsatisfactory to Cepheid or if Purchaser fails to make any payment when due, Cepheid may (i) defer or decline to make any shipment of Products to Purchaser, or (ii) revoke any open account credit Purchaser has.

**LIMITED WARRANTY:** Cepheid warrants that the Products (i) will be free from defects in material and workmanship for a period of one year after shipment, (ii) conform to Cepheid's published specifications for the Products, and (iii) are free of liens and encumbrances when shipped to Purchaser. It is the responsibility of Purchaser to determine and Purchaser assumes the risk for (i) the suitability of the Products for Purchaser's intended use, and (ii) their compliance with applicable laws, regulations, codes and standards. Specific terms of the warranty or warranties for the Products are set forth in Cepheid's current user's manual, catalog, or written guarantee covering such Product. Cepheid does not warrant any defects in any Products caused by (i) improper installation, removal or testing, (ii) Purchaser's failure to provide a suitable operating environment for the Products, (iii) use of the Products for purposes other than that for which they were designed, (iv) unauthorized attachments, (v) unusual physical or electrical stress, (vi) modifications or repairs done by other than Cepheid or a Cepheid authorized service provider, or (vii) any other abuse, misuse, or neglect of the Products. This warranty extends to Purchaser only, and not to Purchaser's customers, except as agreed to in writing by Cepheid. THERE ARE NO WARRANTIES WHICH EXTEND BEYOND THE FACE HEREOF. CEPHEID DISCLAIMS ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESSED OR IMPLIED, REGARDING THE PRODUCTS, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CEPHEID SHALL HAVE NO STRICT LIABILITY, PRODUCTS LIABILITY OR NEGLIGENCE, WHETHER ACTIVE OR PASSIVE.

**LIMITATION OF REMEDIES:** PURCHASER'S EXCLUSIVE REMEDY FOR ANY DEFECTIVE PRODUCT IS LIMITED TO THE REPAIR OR REPLACEMENT OF ANY DEFECTIVE PRODUCT. IF CEPHEID CANNOT OR DOES NOT REPAIR OR REPLACE A DEFECTIVE PRODUCT, CEPHEID WILL REMOVE THE PRODUCT AND RETURN THE PURCHASE PRICE FOR THE DEFECTIVE PRODUCT.

**LIMITATION OF LIABILITY:** EVEN IF CEPHEID CANNOT OR DOES NOT REPAIR OR REPLACE ANY DEFECTIVE PRODUCT AND PURCHASER'S EXCLUSIVE REMEDY FAILS OF ITS ESSENTIAL PURPOSE, CEPHEID'S ENTIRE LIABILITY SHALL IN NO EVENT EXCEED THE PURCHASE PRICE FOR ANY DEFECTIVE PRODUCT, AND CEPHEID SHALL HAVE NO LIABILITY FOR GENERAL, CONSEQUENTIAL, INCIDENTAL OR SPECIAL DAMAGES ARISING FROM A DEFECT IN ANY PRODUCT.

**EQUAL OPPORTUNITY CONTRACT CLAUSE:** Cepheid is committed to the provisions outlined in the Equal Opportunity Clauses of Executive Order 11246, (60-14), section 503 of the Rehabilitation Act of 1973, (60-741.5), and section 402 of the Vietnam Era Veterans Readjustment Act of 1974 (60-250.5), as well as any other regulations pertaining to these orders.

**PATENTS:** Cepheid will settle or defend any suit or proceeding brought against Purchaser if and to the extent the suit or proceeding is based on a claim that any Products as sold directly infringe any issued United States patent. Cepheid shall pay all damages and costs finally awarded against Purchaser on account of any actual infringement. Purchaser will: (i) within ten days after receipt by Purchaser of a communication, notice or other action relating to an alleged infringement, inform Cepheid in writing of the event and furnished to Cepheid a copy of any communication, and (ii) give Cepheid all authority (including the right to exclusive control of the defense of any suit or proceeding), information and assistance necessary to settle or defend the suit or proceeding. Cepheid shall not be bound in any manner by any settlement made without its prior expressed written consent. In the event Products are held to constitute infringement and their use is enjoined, Cepheid may, at its option, (i) obtain for Purchaser the right to continue using the Products, (ii) modify the Products so that they become non-infringing, or (iii) remove the Products grant Purchaser a credit and accept their return. Cepheid has no obligations under this section if the alleged infringement arises out of: (i) Cepheid's compliance with Purchaser's specifications, (ii) Purchaser's addition to or modification of a Product, or (iii) Purchaser's use of a Product with products provided by parties other than Cepheid. Cepheid's obligations under this section do not apply to any alleged infringement occurring after Purchaser has received notice of the alleged infringement unless Cepheid subsequently gives Purchaser express written consent for the continuing alleged infringement. Cepheid shall not be liable for any incidental or consequential damages arising out of a patent infringement. Cepheid's liability hereunder shall not exceed the purchase price paid by Purchaser for the allegedly infringing Products. The foregoing states the sole and exclusive liability of Cepheid with respect to patent infringement and is in lieu of any and all other warranties, expressed or implied, in regard thereto.

**APPLICABLE LAW AND VENUE:** This Sales Agreement shall be governed by and construed in accordance with the internal laws of the State of California. U.S.A. Additionally, venue shall be California.

**ASSIGNMENT:** Neither party may transfer or assign any of its rights, duties or obligations under this Agreement without the prior written consent of the other Party and such consent shall not be unreasonably withheld; PROVIDED THAT either party may assign all of its rights and obligations to a corporation which has acquired substantially all of the business and assets of the assignor and assumed in writing the obligations of a party to this Agreement or to a corporation surviving a merger and consolidation to which the party to this agreement is a party.

**ENTIRE AGREEMENT; MODIFICATION.** This Sales Agreement and any documents referred to in this Sales Agreement: (i) are the final, complete, and exclusive statement of the terms of the agreement of the parties concerning the subject matter of those documents; (ii) supersede all prior written and oral agreements and understandings between Cepheid and Purchaser with respect to the Products, and (iii) may be modified only by a signed writing.

Customer's Initials \_\_\_\_\_



To whom it may concern,

This letter is to confirm that Cepheid Inc. is the sole manufacturer of the Smart Cycler System®, Smart Cycler® processing Block, Smart Cycler® Reaction Tubes and Smart Cycler® Accessories, and that Fisher Scientific and VWR are authorized distributors of the Smart Cycler® System in the U.S. Life Science Research Market. The aforementioned Smart Cycler® products cannot be obtained from any other source other than Cepheid, VWR, or Fisher.

This document details the unique aspects of the Smart Cycler®. These features are exclusive to the Smart Cycler system:

1. The real-time thermocycler must have 16 individually programmable sample processing sites using either 25 uL and/or 100 uL optically integrated reaction tubes.
2. The real-time thermocycler must utilize unbreakable polypropylene sample reaction tubes, with a high surface to volume ratio; not glass capillary-based (amenable to easy breakage, especially in field use).
3. The real time thermocycler must be expandable to 96 sample reaction sites, and yet maintain the ability to independently program each sample reaction site.
4. Each of the individual reaction sites must have its own independent thermal cycling and optical control system, with the ability to accurately record all thermal and spectral (fluorescent) measurements for each sample reaction site.
5. The thermocycler must have the capability to detect four spectral bands using high-intensity LED emitters and silicon detectors for 4 color real-time, simultaneous, optical excitation and detection; allowing the capability to monitor in true real time up to 4 different targets in one sample.
6. The instrument must be factory calibrated to optimally detect the following 4 fluorescent dyes simultaneously; FAM, Cy3, Texas Red, Cy5 ; FAM, TEI, Texas Red, Cy5; or FAM, Alexa532, Texas Red, ALexa647 for Taqman, Beacon, Scorpion, and Amplifluor fluorescent probes. Additionally, the instrument must be capable of melt-curve analysis when intercalating dye chemistries are being employed.
7. The thermocycler software must be capable of performing and illustrating 2<sup>nd</sup> derivative threshold cycle analysis, for efficient and accurate quantitative analysis.
8. The thermocycler software must be capable of automatically advancing to next stage after Ct crossing.
9. The thermocycler must be capable of rapid, real time PCR experimental analysis; sample amplification and analysis must be able to be performed in as few as 20 to 30 minutes.
10. The thermocycler must have the capability to be easily transported with a ruggedized hardened carrying case.
11. The SmartCycler software is to be run on the computer provided with the SmarCycler System. Computers purchased from other sources will not be supported by Cepheid's technical support.

This versatility is required to handle the variety, workflow and performance needed to design and carry out protocols that will best meet experimental requirements.

Please contact me if you have any questions.

Sincerely,

Karen L. Braden

