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and

[•]

Transaction Agreement

Type ***[Insert Number]: [Insert type of
TA]***

in Relation to HIV Viral Load and Early
Infant Diagnosis Technologies

[•] 2015

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Transaction Agreement

in Relation to HIV Viral Load Diagnostic Equipment

Parties:

The Parties to this Agreement are:

1. [●], with its registered office at [●] (the **Transaction Customer**); and
2. [●], with its registered office at [●] (the **Supplier**).

Recitals:

- (A) The Global Fund to Fight AIDS, Tuberculosis and Malaria (the **Global Fund**) is an international financing institution created to raise and disburse funds to support large-scale prevention, treatment, and care programs for HIV/AIDS, tuberculosis, and malaria;
- (B) As part of the Global Fund's sourcing strategy, the Global Fund and the Supplier have entered into a Supplier Framework Agreement in Relation to HIV Viral Load Diagnostic Equipment dated [insert date] (the **Supplier Framework Agreement**);
- (C) The Parties enter into this Transaction Agreement to set out, among other things, the specific terms and conditions on which the Supplier will [insert brief description of the product/service to be provided], in accordance with the Supplier Framework Agreement.

In consideration of the mutual promises and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. AGREEMENT AND CONDITIONS

1.1 Confirmed Orders will be placed by eligible Transaction Customers under this Transaction Agreement for [indicate type of product] through the agreed procurement mechanism, and shall be subject to the terms of the Supplier Framework Agreement. Capitalized terms used and not defined herein shall have the meaning assigned to them in the Agreement. Any reference to the Supplier in this Transaction Agreement shall also cover its Affiliates, as applicable. The following words shall have the following meanings:

- a. **Completion** means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in this Transaction Agreement and the relevant Confirmed Order.
- b. **Contract** has the meaning set forth in Section 1.3 of this Transaction Agreement.

- c. **Contract Price** means the price payable to the Supplier, as specified in each Confirmed Order and in accordance with the Supplier Framework Agreement, subject to such additions thereto or deductions therefrom as may be made pursuant to such Supplier Framework Agreement.
- d. **Delivery** means the transfer of the Supplier Products from the Supplier to the Transaction Customer in accordance with the terms and conditions set forth in this Transaction Agreement and the relevant Confirmed Order.
- e. **Related Services** means the services incidental to the provision of the Supplier Products, such as insurance, installation, training, maintenance and other similar obligations of the Supplier, as indicated in **Schedules E, F, G and H** of this Transaction Agreement and the relevant Confirmed Order.
- f. **Supplier Products** refers to the products listed in **Schedule A**.

1.2 Special conditions will be described in the applicable Confirmed Order.

1.3 In the event of any discrepancy between the special conditions set forth in any Confirmed Order, this Transaction Agreement, and the terms of the Supplier Framework Agreement, the order of priority shall be the following: (1) the Supplier Framework Agreement; (2) the Confirmed Order; and (3) this Transaction Agreement (collectively the **Contract**).

1.4 Enactments. Except as otherwise expressly provided in this Transaction Agreement, any express reference to an enactment (which includes any legislation in any jurisdiction) includes references to:

- a. that enactment as amended, consolidated or re-enacted by or under any other enactment before or after the Effective Date;
- b. any enactment which that enactment re-enacts (with or without modification); and
- c. any subordinate legislation (including regulations) made (before or after the Effective Date) under that enactment, as amended, consolidated, or re-enacted as described in (a) or (b) above.

1.5 Schedules. The Schedules comprise schedules to this Transaction Agreement and form part of this Transaction Agreement.

2. ORDERS FOR SUPPLIER PRODUCTS

2.1 A Confirmed Order that is placed by the Transaction Customer becomes an exclusive agreement between the Transaction Customer and the Supplier for the products and services to be provided, subject to the terms and conditions contained herein and pursuant to the Supplier Framework Agreement. The Confirmed Order is assumed to fully and accurately represent the agreement between the concerned parties. Acceptance by the Supplier may also be evidenced by: (i) the Supplier's written or verbal assent, or the written or verbal assent of any representative of the Supplier; (ii) the Supplier's delivery of the products or the services; or (iii) other conduct by the Supplier or any representative of the Supplier consistent with acceptance of an order. The Transaction Customer shall neither accept nor confirm any Supplier Order until it receives the necessary funds for such Supplier Order or a notification of approval of the Global Fund.

2.2 The Confirmed Order number must appear on all invoices, bills of lading, packing lists, cartons, correspondences and other relevant documents.

2.3 Scope. The Supplier Products to be provided under this Transaction Agreement shall be as specified in **Schedule A**. Unless otherwise stipulated in the Contract, the scope of the Supplier Products shall include such items not specifically mentioned in the Contract but that can be reasonably inferred from the Contract as being required for attaining Delivery and/or Completion as if such items were expressly mentioned in the Contract.

3. DELIVERY AND COMPLETION

3.1 Delivery and Completion shall be in accordance with the Delivery and Completion Schedule specified in **Schedule B**, and the acceptance criteria specified in **Schedule I**.

3.2 Supplier's Responsibilities. The Supplier shall supply all the Supplier Products and Related Services indicated in **Schedule A** in accordance with this Section 3.

3.3 Transaction Customer's Responsibilities. Whenever the provision of the Supplier Products and Related Services requires that the Supplier obtain permits, approvals, and import and other licenses from national public authorities, the Transaction Customer shall, if so requested by the Supplier, make its best effort to assist the Supplier in complying with such requirements in a timely and expeditious manner.

3.4 Title. Transfer of title to the Supplier Products shall be as follows:

- i. In the case of a Purchase Agreement, title to the Supplier Products (free and clear of any encumbrances) shall pass from the Supplier to the Transaction Customer upon Delivery.
- ii. In the case of a Reagent Rental Agreement, the Supplier is the owner of, and retains title to the Supplier Products, and at its discretion, has the right to replace/exchange the Supplier Products, except to the extent of equipment purchases made as mutually agreed upon in writing by the Supplier and the Transaction Customer. Upon the Transaction Customer taking delivery of the Supplier Products, the Transaction Customer shall be responsible to the Supplier for all loss or damage, except: (i) loss or damage relating to Force Majeure events; (ii) loss or damage caused by defective Supplier Products or parts, or improper Related Services, repair or service performed by the Supplier or any of its Affiliates. In the event that the Transaction Customer purchases Supplier equipment at any time during the term of this Transaction Agreement, the Supplier shall establish terms and conditions of such sale at the time of the Transaction Customer's request.

3.5 Partial Delivery. Unless explicitly permitted in the Confirmed Order, partial deliveries are not acceptable, and unless otherwise approved in writing by the Transaction Customer under such conditions as Transaction Customer may impose, all items and quantities of the Supplier Products described in the Confirmed Order shall be supplied together at one and the same time, and tender of any portion of the Supplier Products shall not be considered delivery. In the event of short/partial delivery, the Transaction Customer reserves the right, at its unilateral option, in addition to any other rights specified by other provisions of the Contract, to either (1) reject the delivery entirely (in which case the Supplier shall promptly pay the Transaction Customer upon demand any excess costs of procurement and, if the Supplier Products were underway, promptly arrange for the return, destruction or other disposition of the rejected Supplier Products; (2) deem the undelivered quantity to be rejected and reduce the total contract price by the value of the

undelivered quantity or (3) authorize the Supplier upon request to make up the shortage at a later, mutually agreed date (subject to Paragraph e below).

4. CONTRACT PRICE AND TERMS OF PAYMENT

4.1 The Contract Price for the Supplier Products shall not vary from the prices indicated in the Supplier Framework Agreement, with the exception of any additions or deductions authorized therein.

4.2 The terms of payment is specified in **Schedule C**.

5. TAXES AND DUTIES

5.1 The Supplier shall be entirely responsible for all taxes, duties, license fees and other such levies incurred until Delivery of the Supplier Products to the Transaction Customer and/or Completion of the Related Services, as the case may be.

5.2 If any tax exemption, reductions, allowances or privileges may be available to the Supplier in the Transaction Customer's country, the Transaction Customer shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

6. SPECIFICATIONS AND STANDARDS

6.1 Supplier Products and Related Services provided by the Supplier under this Transaction Agreement shall conform to the technical specifications and standards mentioned in **Schedule A** and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the country of origin of the Supplier Product concerned.

6.2 Whenever references are made in the Contract to codes and standards in accordance with which it shall be executed, the most current edition or the revised version of such codes and standards shall be those specified in **Schedule A**.

7. PACKAGING AND DOCUMENTS

7.1 The Supplier shall provide such packaging of the Supplier Products as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packaging shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and precipitation, and open storage. Packing case size and weight shall take into consideration, where appropriate, the remoteness of the final destination of the Supplier Products and the absence of heavy handling facilities at all points in transit.

7.2 The packing, marking and documentation within and outside the packages shall comply strictly with such special requirements as expressly provided in the **Schedule D**, including additional requirements and any other instructions ordered by the Transaction Customer.

8. INSURANCE

8.1 The Supplier Products supplied under this Transaction Agreement shall be fully insured, in a freely convertible currency, against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in accordance with the applicable Incoterms 2010 (as issued by the International Chamber of Commerce, Paris, France).

9. TRANSPORTATION

9.1 Obligations for transportation of the Supplier Products shall be in accordance with the Incoterms 2010 specified in **Schedule B**.

10. INSPECTIONS AND TESTS

10.1 The Supplier shall, at its own expense and at no cost to the Transaction Customer, carry out all such tests and/or inspections of the Supplier Products and Related Services as are specified in **Schedule A**.

10.2 The inspections and tests may be conducted on the premises of the Supplier or its Affiliate, at point of Delivery, and/or at the final destination of the Supplier Products, or in another place in the Transaction Customer's country, as may be specified in **Schedule B**. Subject to Section 10.3 of this Transaction Agreement, if conducted on the premises of the Supplier or its Affiliate, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the Transaction Customer.

10.3 The Transaction Customer or its designated representative shall be entitled to attend the tests and/or inspections referred to in Section 10.2 of this Transaction Agreement, provided that the Transaction Customer shall bear all of its own costs and expenses incurred in connection with such attendance including, but not limited to, all travelling and board and lodging expenses.

10.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the time and place, to the Transaction Customer. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the Transaction Customer or its designated representative to attend the test and/or inspection.

10.5 The Transaction Customer may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Supplier Products comply with the technical specifications, standards and codes under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery and Completion dates and other obligations so affected.

10.6 The Supplier shall immediately provide the Transaction Customer with a report of the results of any such test and/or inspection.

10.7 The Transaction Customer may reject any Supplier Product or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Supplier Product or parts thereof or make alterations necessary to

meet the specifications at no cost to the Transaction Customer, and shall repeat the test and/or inspection, at no cost to the Transaction Customer, upon giving a notice pursuant to Section 10.4 of this Transaction Agreement.

10.8 The Supplier agrees that neither the execution of a test and/or inspection of the Supplier Products or any part thereof, nor the attendance by the Transaction Customer or its representative, nor the issue of any report pursuant to Section 10.6 of this Transaction Agreement, shall release the Supplier from any warranties or other obligations under the Contract.

11. LIQUIDATED DAMAGES

11.1 Except in the case of a Force Majeure event, if the Supplier fails to delivery any or all of the Supplier Products or Complete the Related Services within the period specified in the Contract, the Transaction Customer may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to 0.5 percent of the Contract Price for each week or part thereof of delay until actual Delivery or Completion, up to a maximum deduction of 10 percent of the Contract Price. Once the maximum is reached, the Transaction Customer may terminate the Confirmed Order pursuant to Section 15.3 of this Transaction Agreement.

12. PATENT INDEMNITY

12.1 The Supplier shall, subject to the Transaction Customer's compliance with Section 12.2 of this Transaction Agreement, indemnify and hold harmless the Transaction Customer and its employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Transaction Customer may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property rights registered or otherwise existing at the date of the Contract, by reason of the installation of the Supplier Products by the Supplier or its Affiliates, or the use of the Supplier Products in the country where the Supplier Products are Delivered and installed in accordance with **Schedule B**. Such indemnity shall not cover any use of the Supplier Products or any part thereof other than for the purpose indicated by, or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Supplier Products or any part thereof in association or combination with any other equipment or materials not supplied or authorized by the Supplier, pursuant to the Contract.

12.2 If any proceedings are brought or any claim is made against the Transaction Customer arising out of the matters related to Section 12.1 of this Transaction Agreement, the Transaction Customer shall promptly give the Supplier a written notice thereof.

13. SUPPLIER REPRESENTATIONS AND WARRANTIES

13.1 The Supplier represents, warrants and covenants to the Transaction Customer as of the effective date of this Transaction Agreement, and on a continuing basis during the term and for no less than three years from the first usage of the Supplier Product concerned that:

- i. Supplier Products delivered under this Transaction Agreement are merchantable and fit for use for the particular purpose for which the Supplier Products are ordinarily used;

- ii. The Supplier's performance of this Transaction Agreement and supply of each Supplier Product shall:
 - 1. conform to the requirements of the Supplier Framework Agreement and this Transaction Agreement;
 - 2. be produced and processed in compliance with the relevant quality standards, including those indicated in the Supplier Framework Agreement;
 - 3. be produced and processed in compliance with all applicable laws;
 - 4. comply with the Supplier Code of Conduct of the Global Fund;
 - 5. comply with the Supplier's standard operating procedures; and
 - 6. be free from defects in design, materials or workmanship;
- iii. The supply of each Supplier Product shall be transferred to the buyer free and clear of any liens, claims, encumbrances or security interest of any kind;
- iv. The Supplier Product is covered by intellectual property licenses, patents, permissions, or rights which will not infringe the intellectual property rights of any third person, and which, being granted to the Transaction Customer, will be adequate to ensure that it may freely utilize the licenses, permissions and rights free and clear of any claim, encumbrance, lien or interest of any other person or entity, and in all other respects without disturbance or impediment. The Supplier will notify the Transaction Customer of any patent or other intellectual property infringement claim filed or to its best knowledge threatened or pending in respect of the Supplier Product in any of the jurisdictions relevant to the applicable Transaction Agreement at the time of order placement indicating its ability and willingness to supply the Supplier Product. The Transaction Customer shall have the option to proceed or cancel the Transaction Agreement.
- v. The Supplier's performance of this Transaction Agreement, including the manufacture, labeling and packaging of the Supplier Products by the Supplier, does not infringe any patent of any third party or constitute a misappropriation of the trade secrets or other intellectual property rights of any third party;
- vi. The Supplier will comply with all applicable customs administration and control laws and regulations of any applicable jurisdiction, as may be applicable to the export, import, resale or other disposition of any Supplier Products purchased from the Supplier;
- vii. The Supplier has obtained and will maintain all licenses, permissions, authorizations (public or private) and consents or waivers required for carrying on its obligations under this Transaction Agreement effectively in the places and in the manner in which it is carried on pursuant to this Transaction Agreement and in accordance with all applicable laws in each case, these approvals are in full force and effect, are not limited in duration or subject to any materially unusual or onerous conditions, and have been complied with in all material respects; and
- viii. The Supplier acknowledges that the Transaction Customer is required to comply with the applicable grant agreement between the Global Fund and the transaction Customer (in force from time to time) and the relevant policies and procedures of the Global Fund

(including the product selection requirements in the Global Fund Quality Assurance Policy), and the Supplier shall not take any action to induce or cause a breach or violation of that Grant Agreement or those policies and procedures.

14. LIMITATION OF LIABILITY

14.1 Except in cases of gross negligence or wilful misconduct:

- a. Neither party shall be liable to the other party for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the Transaction Customer; and
- b. The aggregate liability of the Supplier to the Transaction Customer, whether under the Contract, in tort, or otherwise, shall not exceed 100 percent of the aggregate amount of Confirmed Orders that have been issued under this Transaction Agreement up to the date of the occurrence of the event that has given rise to the current liability, provided that this limitation shall not apply to the cost of repairing or replacing defective equipment, or to any obligation of the Supplier to indemnify the Transaction Customer with respect to patent infringement.

15. AMENDMENT OR CANCELLATION OF TRANSACTION AGREEMENT OR CONFIRMED ORDER

15.1 In the event that the Global Fund or the Transaction Customer wishes to cancel partially or fully, or amend, this Transaction Agreement or a Confirmed Order, the Transaction Customer and the Supplier shall effect such amendment or cancellation immediately upon receipt of written notice from the Transaction Customer and /or the Global Fund, provided that this Transaction Agreement shall not be amended without the prior written consent of the Global Fund. The Transaction Customer and the Supplier shall use reasonable efforts to seek alternative acceptable means to effect the request to amend or cancel this Transaction Agreement or a Confirmed Order, as applicable. In the event that costs have been incurred by the Supplier in connection with such cancellation or amendment, the Supplier may charge a cancellation fee, in an amount to be agreed between the Transaction Customer and the Supplier, based on the amount of work completed as of the date of such cancellation or amendment, to be reimbursed by the Transaction Customer. In the event that products have already been produced, the Supplier may refuse such cancellation to the extent of such products produced or in the active process of manufacturing.

15.2 The Supplier has a duty to use its best efforts to mitigate any damage or loss resulting from a termination by the Global Fund or the Transaction Customer. The Global Fund and the Transaction Customer shall have the right to audit all elements of the termination charge, and the Supplier shall make available to the Global Fund and the Transaction Customer on request, all books, records and papers relating thereto.

15.3 If the Supplier fails to comply with any of its obligations in the Supplier Framework Agreement, any Confirmed Order or this Transaction Agreement, the Supplier shall be in default without further notice being required. In the event of a default, or if insolvency or bankruptcy proceedings are instituted against the Supplier (including voluntary insolvency or bankruptcy proceedings), or if the Supplier is liquidated or dissolved, or if any attachment is made over the assets of the Supplier or on its behalf, or if the Supplier makes an unauthorised assignment for the benefit of creditors, or if any other person or entity (than the person or entity having control

over the Supplier at the date of this Transaction Agreement) acquires control over the Supplier, the Transaction Customer shall be entitled to rescind or terminate this Transaction Agreement in whole or in part, without prejudice to any other rights or remedies available under the Supplier Framework Agreement, the Confirmed Order, and this Transaction Agreement, or at law (including, without limitation, the right to seek damages).

15.4 All provisions of the Supplier Framework Agreement, any Confirmed Order and this Transaction Agreement that are intended to survive the dissolution, termination or expiration thereof shall survive such dissolution, termination or expiration.

16. TERM

16.1 The initial term of this Transaction Agreement shall commence on the date of its execution by both parties and remain in effect for the duration of the Supplier Framework Agreement, unless otherwise terminated as expressly provided under the terms of this Transaction Agreement.

[Signatures follow.]

IN WITNESS WHEREOF, the Transaction Customer and the Supplier have caused this Agreement to be executed as of the dates indicated below by their respective officers thereunto duly authorized.

Executed for and on behalf of [●]:

Executed for and on behalf of [●]:

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

Schedule of Supplier Products

[To be determined during the Stage 2 of the RFP.]

SCHEDULE B

Delivery and Completion Schedule

[To be determined during the Stage 2 of the RFP.]

SCHEDULE C

Terms of Payment

[To be determined during the Stage 2 of the RFP.]

SCHEDULE D

Instructions on Packing, Marking and Documentation

[To be determined during the Stage 2 of the RFP.]

SCHEDULE E

Support and Maintenance

[To be determined during the Stage 2 of the RFP.]

SCHEDULE F

Installation

[To be determined during the Stage 2 of the RFP.]

SCHEDULE G

Training

[To be determined during the Stage 2]

SCHEDULE H

Other Services

[To be determined during the Stage 2 of the RFP.]

SCHEDULE I

Acceptance Criteria

[To be determined.]