The Global Fund to Fight AIDS, Tuberculosis and Malaria

and

[●]

Supplier Framework Agreement

in Relation to HIV Viral Load Diagnostic Equipment

[●] 2015

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Supplier Framework Agreement

in Relation to HIV Viral Load Diagnostic Equipment

Parties:

The Parties to this Agreement are:

1. The Global Fund to Fight AIDS, Tuberculosis and Malaria, a foundation organized under the laws of Switzerland with its registered office at Chemin de Blandonnet 8, 1214 Vernier, Geneva, Switzerland (the ***Global Fund***); and

2. [●], with its registered office at [●] (the ***Supplier***).

Recitals:

(A) 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 has decided to enter into Framework Agreements with certain Suppliers of Diagnostic Products, including HIV Viral Load Diagnostic Equipment;

(C) With respect to the procurement of HIV Viral Load Diagnostic Equipment, the Global Fund commenced a competitive tender process with eligible Suppliers of HIV Viral Load Diagnostic Equipment through the issuance of a Request for Proposals (RFP) (the ***Tender***), and through that process, the Supplier was selected as an eligible Panel Supplier; and

(D) The Parties enter into this Agreement to set out, among other things, the terms and conditions on which the Supplier will perform the role of a Panel Supplier, providing Supplier Products to eligible Transaction Customers, including pursuant to the Pooled Procurement Mechanism.

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. DEFINITIONS AND INTERPRETATION

1.1 Definitions. In this Agreement, the following words and expressions shall have the following meanings:

Affiliate means in relation to any person, any subsidiary undertaking or parent undertaking of that person and any subsidiary undertaking of any such parent undertaking, and any

person acting on behalf of any such person (including an agent, distributor, sub-contractor or consultant) with regard to the performance of an obligation contained within this Agreement, in each case from time to time.

Agreement means this Supplier Framework Agreement.

Applicable Laws shall mean any federal, national, supranational, state and local laws, rules, regulations (including those of a professional body), ordinances, administrative statutes, codes, orders or requirements of any country or jurisdiction applicable to the Supplier, the Global Fund or an Affiliate of the Supplier or the Global Fund, as the context may require.

Authorized Officer has the meaning given in Section 17.10.

Books and Records has the meaning given in Section 8.2.

Business Day means a day other than a Saturday or Sunday or public holiday in the United States of America and Switzerland on which banks are open in the City of New York, United States of America and Geneva, Switzerland for general commercial business.

Change of Control means if control of the Supplier is acquired (whether through a single transaction or a series of transactions), directly or indirectly, by another person or persons acting in concert which were not, prior to the acquisition, Affiliates of the Supplier.

Confidential Information means all information given to a Party (or any of its Representatives) by the other Party (or any of its Representatives), or otherwise acquired by such persons in the performance of or in relation to this Agreement, including any information regarding products, advertising, distribution, marketing, strategic plans, costs, productivity or technological advances (and, for the avoidance of doubt, such information includes written information and information transferred or obtained orally, visually, electronically or by any other means which is or can be reduced to writing).

Confirmed Order has the meaning given in Section 6.2.

Day means calendar day.

Default has the meaning given in Section 14.5.

Diagnostic Products means any durable and non-durable in vitro diagnostic product and microscopes and imaging equipment used in Global Fund-financed programs for diagnosis, screening, surveillance or monitoring purposes.

Dispute has the meaning given in Section 16.2.

Effective Date means the date of this Agreement, as set forth on the Cover Page.

EXW means that the seller delivers when it places the goods at the disposal of the buyer at the seller's premises or at another named place (as that term is used and interpreted in accordance with the Incoterms 2010 published by the International Chamber of Commerce).

Force Majeure means an event beyond the control of the Global Fund or the Supplier, which by its nature could not have been foreseen by the Global Fund or the Supplier, or, if it

could have been foreseen, was unavoidable, and includes, without limitation, acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity, one or more acts of terrorism or failure of energy sources, significant currency fluctuations, financial crises, and significantly increased financial or economic exposure howsoever arising.

Global Fund Quality Assurance Officer means a representative or employee of the Global Fund nominated or designated to be the "Global Fund Quality Assurance Officer" for the purposes of this Agreement.

Global Fund Quality Assurance Policy means the Global Fund Quality Assurance Policy for Pharmaceutical Products as set out on the Global Fund website (www.theglobalfund.org) and amended from time to time.

Governmental Authority means any (a) federal, supra-national, national, state, provincial, municipal or local government (including any subdivision, court, administrative agency or commission or other authority thereof); (b) court, arbitral or other tribunal or governmental or quasi-governmental authority of any nature (including any governmental agency, political subdivision, stock exchange, instrumentality, branch, department, official, or entity); or (c) quasi-governmental, private body or other organization exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or taxing authority or power of any nature pertaining to government.

Health Products means: (i) pharmaceutical products; (ii) durable and non-durable in vitro diagnostic products, microscopes and imaging equipment; (iii) mosquito nets; and (iv) consumable/single use health products (including condoms, insecticides, therapeutic nutritional support, general laboratory items and injection syringes), which are financed out of Global Fund grant funds or as may be otherwise defined in the Guide to the Global Fund Policies on Procurement and Supply Management of Health Products and set out at http://www.theglobalfund.org/en/procurement/.

Loss has the meaning given in Section 13.1.

Material Adverse Event has the meaning given in Section 8.1.

National Regulatory Authority or ***NRA*** means the official regulatory authority of a country for Health Products and Diagnostic Products.

Non-Conforming Product means any Supplier Product that does not match either the commercial, technical, or quality specifications of either (i) this Agreement or (ii) any Confirmed Order pursuant to this Agreement.

Panel Supplier means a supplier of Supplier Products that has entered into this Agreement with the Global Fund per the RFP.

Parent means a person which, in relation to another person, holds a majority of the voting rights in the person; has the right to appoint or remove a majority of its board of directors (or equivalent); has the right to exercise a dominant influence over the person by virtue of provisions contained in the person's memorandum or articles (or equivalent) or by virtue of a control contract; or controls alone, or pursuant to an agreement with others, a majority of

the voting rights in the person, in each case, whether directly or indirectly through one or more subsidiaries.

parent undertaking means an undertaking which, in relation to another undertaking: holds a majority of the voting rights in the undertaking; has the right to appoint or remove a majority of its board of directors (or equivalent); has the right to exercise a dominant influence over the undertaking by virtue of provisions contained in the undertaking's memorandum or articles (or equivalent) or by virtue of a control contract; or controls alone, or pursuant to an agreement with others, a majority of the voting rights in the undertaking, in each case whether directly or indirectly through one or more subsidiary undertakings.

person or ***undertaking*** includes any individual, firm, company, body corporate (wherever incorporated), joint venture, association, partnership, limited partnership, limited liability partnership, trust, government, state or agency of a state, works council or employee representative body (whether or not having separate legal personality) or any other similar entity in any jurisdiction.

Pricing has the meaning given in Section 4.1.

Principal Recipient means a person that is the principal recipient of a grant made by the Global Fund.

procuring agent/entity means a person selected by the Global Fund to act as an agent on behalf of Principal Recipients for the execution of transactions under this Agreement.

Representatives means, in relation to a person, its respective Affiliates and the directors, partners, officers and employees and any sub-contractors, agents, and consultants within the responsibility or control of that person and/or of its respective Affiliates. For the purposes of clarification only, the Supplier may confirm in writing whether it considers that any specific sub-contractor, agent, or consultant of the Supplier qualifies as a Representative of the Supplier under this Agreement.

RFP means the Request for Proposal TGF-__-____ for HIV Viral Load Diagnostic Equipment issued by the Global Fund.

Schedule means each schedule to this Agreement (as may be amended or restated in accordance with this Agreement).

Shelf Life means the period from the date of manufacture of the relevant Supplier Product to the expiry date (as specified by the manufacturer), during which full compliance of the Supplier Products with the manufacturer's standards is guaranteed by the manufacturer.

Subsidiary means any person in relation to which another person is its Parent.

subsidiary undertaking means any undertaking in relation to which another undertaking is its parent undertaking.

Suppliers collectively means suppliers and/or manufacturers of Health Products.

Supplier Code of Conduct means the Global Fund's *Code of Conduct for Suppliers*, as amended from time to time and available on the Global Fund's website at http://www.theglobalfund.org/en/library/documents/.

Supplier Order means the order issued by the Supplier in response to the Transaction Customer's request for a Supplier Product per the terms of this Agreement, which is consistent with the terms of the Transaction Customer's request, and constitutes a contractual offer.

Supplier Products has the meaning given in **Schedule A**.

Tender has the meaning given in the Recitals;

Term has the meaning given in Section 14.1;

Transaction Agreement means a contract between a Transaction Customer (including a procuring agent/entity, if applicable) and the Supplier for the procurement and delivery of Supplier Products under this Agreement;

Transaction Customer means any party that enters into a Transaction Agreement for the Supplier Products, and for which the Panel Supplier shall provide such Supplier Products, pursuant to the terms of this Agreement and the relevant Transaction Agreement.

WHO means the World Health Organization;

WHO GMP Requirements means the current good manufacturing practices applied and certified by WHO, Geneva, which ensure that Health Products are consistently produced and controlled according to quality standards appropriate to their intended use;

WHO Prequalification Program means the program managed by WHO which prequalifies (a) medicines that are considered to be acceptable for procurement by the United Nations and specialized agencies; and (b) quality control laboratories for medicines;

1.2 Interpretation. In this Agreement, unless the context otherwise requires:

i. headings do not affect the interpretation of this Agreement;

ii. the singular shall include the plural and vice versa and references to one gender include all genders;

iii. references to dollars, US dollars, USD or $ are references to the lawful currency from time to time of the United States of America; and

iv. any phrase introduced by the terms including, include, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

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

i. that enactment as amended, consolidated or re-enacted by or under any other enactment before or after the Effective Date;

ii. any enactment which that enactment re-enacts (with or without modification); and

iii. 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.

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

1.5 Inconsistencies. Where there is any inconsistency between the definitions set out in this Section 1 and the definitions set out in any Section or any Schedule, then, for the purposes of construing such Section or Schedule, the definitions set out in such Section or Schedule shall prevail.

2. AGREEMENT SCOPE AND STRUCTURE

2.1 Generally. The scope of this Agreement, which has been prepared to accommodate Panel Suppliers selected as a result of the RFP and Tender process, includes the procurement of Supplier Products with Global Fund financing.

3. REQUIREMENTS FOR SUPPLIER PRODUCTS

3.1 Product Requirements. The Supplier shall only provide Supplier Products under this Agreement that meet the following criteria; the Supplier represents and warrants that all Supplier Products supplied under this Agreement meet these criteria; and the Global Fund will only authorize the Transaction Customer to contract for Supplier Products that meet the following criteria:

i. The Supplier Products are in compliance with the quality standards established as articulated in the Guide to the Global Fund Policies on Procurement and Supply Management of Health Products and that are consistent with the applicable Global Fund Quality Assurance Policies (http://www.theglobalfund.org/en/procurement/quality/); and

ii. The Supplier shall provide the Global Fund with access to updates on technology developments and innovations in the marketplace.

3.2 Quality Standards.

i. The quality of all Supplier Products supplied under this Agreement shall conform in all respects to the requirements of the relevant Transaction Agreement, including all required warranties, representations, and undertakings.

ii. The Supplier Products shall comply with the quality requirements and standards set out in the Global Fund Quality Assurance Policy on Diagnostics (www.theglobalfund.org/en/procurement/quality/diagnostics/).

3.3 Monitoring and Enforcement of Product Requirements and Quality Standards. Unless the Global Fund instructs the Supplier otherwise, a procuring agent/entity shall be responsible for monitoring and enforcing the Supplier's compliance with the requirements of this Section 3, and the Supplier will cooperate with such monitoring and enforcing activities.

4. PRICING OF SUPPLIER PRODUCTS

4.1 Pricing. The pricing and discounts for the Supplier Products is set forth in Schedule B (the ***Pricing***). Any changes to the Pricing during the Term must be effected through an amendment to Schedule B.

4.2 Revisions to Pricing during Term. The Pricing may be amended by the Parties through an amendment to Schedule B, which will apply to all future orders or as the Global Fund determines (and, as required, amendment to other Schedules and Sections of this Agreement), including as a result of one or a combination of the following events:

i. A volume commitment or an allocation that results in additional volume-based price discounts;

ii. As a result of implementation of the pricing adjustment mechanism (if applicable) as defined in Section 4.5;

iii. The Global Fund's annual contract review of this Agreement, as described in Section 7; or

iv. As part of the performance review.

4.3 Pricing Requirements: Most Favored Customer. The Supplier shall offer the Pricing as follows:

i. All of the benefits and terms granted by the Supplier with respect to the Pricing are at least as favorable as the benefits and terms granted by the Supplier to any current customer of Supplier Products on terms equivalent to those supplied under this Agreement (e.g., with respect to similar customers in similar geographical situations, and with similar specifications);

ii. Should the Supplier enter into any subsequent agreement with any other person during the Term that provides for the supply of Supplier Products on terms equivalent to the Pricing at benefits or terms more favorable than the Pricing, this Agreement shall be deemed to be modified to provide those more favorable benefits or terms; and

iii. The Supplier shall notify the Global Fund promptly of the existence of any such more favorable pricing with other buyers as described in Section 4.5.ii, and the Global Fund shall have the right to receive those more favorable benefits and terms immediately, which shall be evidenced by an amendment to this Agreement as necessary.

4.4 Technical Aspects of Pricing. The following terms and conditions will apply to all pricing arrangements and purchases of Supplier Products under this Agreement:

i. The standard Incoterms 2010 quoted shall be EXW, unless otherwise agreed upon.

ii. All financial values relating to this Agreement shall be denominated in United States Dollars; and

iii. The Global Fund reserves the right to amend the payment terms to the Supplier for purchases of Supplier Products, by written notice to the Supplier.

4.5 Price Adjustment Mechanism.

[*To be determined.*]

4.6 Revisions to Supplier Products during the Term. Any changes to the Supplier Products during the Term must be effected through an amendment to Schedule A. The Parties acknowledge that additional Supplier Products may be added to Schedule A during the Term through such an amendment.

4.7 Similar Arrangements with Other Persons. The Global Fund expects that the Supplier will enter into agreements that have the same terms, conditions and pricing as this Agreement with the following types of buyers: (i) Global Fund Grant Principal Recipients and sub-recipients; (ii) Governments of host countries (i.e. countries where Global Fund grants are being implemented), which includes ministries, agencies and governmental organizations or institutions, such as public hospitals and prison services in such host countries; (iii) United Nations-related organizations, non-governmental organizations and not-for-profit organizations; and (iv) development and/or public health financing mechanisms, such as the United States President's Emergency Plan for AIDS Relief (PEPFAR) and the United States Agency for International Development (USAID), including international agencies that are supporting in-country public health programs, like the United States Centers for Disease and Control.

5. VOLUME COMMITMENT / ALLOCATION

[*To be determined.*]

6. PROCUREMENT CHANNELS

6.1 Procuring agent/entity as Transaction Customer. If so instructed by the Global Fund to the Supplier, transactions for Supplier Products may be made by a procuring agent/entity, acting on behalf of the relevant Principal Recipient, as one of the eligible Transactions Customers, pursuant to the terms of this Agreement, the relevant Transaction Agreement, and any pertinent terms and conditions of such procuring agent/entity.

6.2 Summary of Operational Arrangements. This following section summarizes the respective roles of the Global Fund or the procuring agent/entity, as the case may be, the Transaction Customer and the Supplier under this Agreement. This summary is provided for information only, and is a description of the arrangements in place as of the Effective Date, which are subject to change at the Global Fund's discretion, subject to the terms of this Agreement.

i. *Requests for Supplier Product*: During implementation, the Transaction Customer will first submit a request to the Supplier for a Supplier Product per the terms of this Agreement. For requests issued by the procuring agent/entity, such requests shall be in accordance with this Agreement and any pertinent terms and conditions of such procuring agent/entity.

ii. *Supplier Order*: The Supplier will respond to the Transaction Customer's request by (i) notifying the Transaction Customer if the Supplier is of the view that the request is not consistent with the terms of this Agreement, with copy to the Global Fund; or (ii) issuing a Supplier Order to the Transaction Customer (constituting a contractual offer) that is consistent with the terms of the Transaction Customer's request.

iii. *Contractual Arrangement between Transaction Customer and Supplier*: The Transaction Customer will send a written acceptance of the Supplier Order to the Supplier,

thereby establishing a legally binding contract in the form of a Confirmed Order with a Panel Supplier with respect to the Supplier Product, with product, payment, and delivery modalities specified therein (a ***Confirmed Order***).

iv. *Order Placement and Management by the Global Fund or procuring agent/entity*: In managing the order placement process for the Supplier Products, the Global Fund or the procuring agent/entity will:

1. determine the appropriate Panel Supplier(s) for each applicable transaction (in line with agreed processes with the Global Fund);

2. access the appropriate Transaction Agreement with the Panel Supplier;

3. place orders on behalf of the Principal Recipient with the appropriate Panel Supplier pursuant to the terms of this Agreement, the relevant Transaction Agreement and any pertinent terms and conditions of the procuring agent/entity (if applicable);

4. notify the Principal Recipient of the applicable delivery due date and other reporting requirements, including as set forth in this Agreement, the relevant Transaction Agreement and any pertinent terms and conditions of the procuring agent/entity (if applicable). The Panel Supplier(s) will confirm, on receipt of the Supplier Order from the Transaction Customer or procuring agent/entity, as the case may be, when the first deliveries will be available for inspection and the final price;

5. manage the execution of the orders with the selected Panel Supplier(s), including tracking the purchase volume and any necessary reporting;

6. establish and maintain required shipping, insurance, and freighting agreements with relevant agents, and process and manage associated orders according to Principal Recipient needs; and

7. coordinate the required pre-shipment inspection and quality testing of Supplier Products, if required.

6.3 *Invoice Payment*: The Global Fund or the procuring agent/entity, as the case may be, will be responsible for the timely and appropriate payment of invoices from Panel Suppliers. Supplier Monitoring and Reporting. The Global Fund or the procuring agent/entity (and reporting to the Global Fund), as the case may be, will:

i. monitor the performance of Panel Suppliers and purchases; and

ii. input data to the Global Fund Price & Quality Reporting (PQR) system.

6.4 Legal Status of the procuring agent/entity. In cases where a procuring agent/entity is appointed, unless the Global Fund expressly notifies the Supplier otherwise, the procuring agent/entity shall act solely as an agent of each applicable Principal Recipient, shall obtain written instructions or consent from the Principal Recipient in relation to all material activities conducted by the procuring agent/entity, and shall not represent or have the power to legally obligate the Global Fund.

6.5 Limitation. For the avoidance of doubt, the matters detailed in Sections 6.2 and 6.3 of this Agreement are only for the information of the Parties. Unless otherwise stated in this Agreement, the Global Fund shall not be liable or responsible in any way for managing these matters (including paying for them or procuring them or ensuring that any of them are obtained in a timely fashion).

7. SUPPLIER CONTRACT MANAGEMENT AND PERFORMANCE MONITORING

7.1 General. The contract management system and performance management system in this Agreement have been designed to ensure that a flexible and rigorous process is in place to manage any changes that may occur during the term of this Agreement, to manage the performance of the Supplier, and to support a collaborative working relationship. The process consists of the following activities:

i. Regular contract reviews by the Global Fund to monitor progress and determine necessary changes, which shall be implemented through amendment(s) to this Agreement, as required; and

ii. Establishment and application of a performance management system to measure key performance indicators from the Global Fund, the procuring agent/entity (if applicable), and the Supplier.

7.2 Supplier Cooperation. The Supplier shall cooperate and participate in the contract review process, as requested by the Global Fund.

7.3 Timing of Contract Reviews. The Global Fund expects to conduct contract reviews of the Supplier every six months of the Agreement, during the second and fourth quarters of the relevant calendar year.

7.4 Anticipated Scope of Contract Reviews. The contract reviews have the following purposes:

i. To review any applicable volume commitment or allocation with the Supplier;

ii. To provide as much visibility as possible of forthcoming demand;

iii. To review the pricing performance with regard to additional discounts (although this process may be enacted without a contract review);

iv. To review Supplier and buyer performance indicators and implement any actions coming from this; and

v. To review the terms of this Agreement and permit either Party to put forward a proposal for alteration or amendment,

7.5 Performance Management System: General. The performance management system is designed to ensure compliance to the Agreement, and simultaneously to support continuous improvement. It is comprised of: (1) Supplier reporting, including Global Fund and the procuring agent/entity (if applicable) performance management metrics; and (2) Supplier performance management.

7.6 Performance Management System: Process and Application. The Supplier shall submit a performance report to the Global Fund by the last working day of each third calendar month, i.e. on a quarterly basis during the Term, using the format provided in Schedule D, report on productivity, current and forecast utilization, and identify any lack of performance by either the Global Fund or any other person involved in this Agreement, relating to timeliness and accuracy of data provision, responsiveness and timely payment, or any other matter that has impacted or may impact production efficiency or cost. Data from this document will not be used for Supplier performance monitoring, but may be used to provide capacity data for future planning purposes. The Global Fund will endeavor to review this information and attempt to improve the performance of all persons involved in this Agreement, and may respond with plans for improvement within 30 calendar days. However, owing to the complexity of the business environment and multiplicity of Principal Recipients, the Global Fund is under no obligation with respect to the process described in this Section **Error! Reference source not found.**.

7.7 Supplier Performance Management. Supplier performance management will be measured using selected indicators and will be reported every quarter at the beginning of the following quarter. Delivery performance will be measured by comparing the contracted delivery dates appearing in each Transaction Agreement and/or Supplier Order with the actual date(s) of delivery.

8. SUPPLIER RECORD KEEPING, ACCESS, AND AUDIT

8.1 Notice of Material Adverse Events. The Supplier shall immediately notify the Global Fund in writing of any of the following events or circumstances which come to the Supplier's knowledge (each a ***Material Adverse Event***):

i. an adverse change in the financial, technical or other condition of the Supplier which materially affects the Supplier's ability to perform its obligations under this Agreement; or

ii. an event or circumstance, including any regulatory reporting matters, that may materially adversely impact:

1. the health or safety of patients using Supplier Products, including all such notifications the Supplier provides to, or receives from, WHO or other regulatory authorities;

2. the sale or distribution of counterfeits of Supplier Products in any country;

3. the sale or distribution of Supplier Products in any country, including a recall of Supplier Products, a material shortage of Supplier Products, or any other circumstances that may prevent the Supplier from supplying Supplier Products under this Agreement; or

4. the Global Fund's reputation, including any acts or omissions of a Transaction Customer or another third party that the Supplier is aware of and that the Supplier believes may materially compromise the objectives of the Global Fund including:

(A) corruption, abuse, fraud or waste involving any person; or

(B) any actual, suspected, or threatened infringement or any other form of attack, allegation, prejudice, or claim against any trademarks or trade names of the Global Fund.

8.2 Record-Keeping and Audits.

i. *Record Keeping*: The Supplier shall, and shall use all its reasonable commercial endeavors to ensure that its Affiliates, maintain accounting books, records, documents and other evidence relating to this Agreement, including the supply of Supplier Products (***Books and Records***) including, as applicable, all Transaction Agreements and Supplier Orders, insurance contracts, invoices and shipping and delivery documentation. The Supplier must keep those Books and Records it its possession for at least three years after the date of the last payment for the purchase of Supplier Products under this Agreement, or for such longer period, if any, required to resolve any claims or audit enquiries, or if required by the Global Fund by written notice to the Supplier.

ii. *Audit Right*: Upon written notice to the Supplier, the Global Fund shall have the right to perform an audit of the Books and Records of the Supplier and its Affiliates.

iii. *Audit Terms and Conditions*: The Global Fund shall have the right to conduct such audit at any time during the Term. Such audit will be during normal business hours, may be conducted by the Global Fund (including its Office of the Inspector General) or by an agent of the Global Fund, will be at the expense of the Global Fund, and will be carried out in a manner that does not unreasonably interfere with the normal conduct of the Supplier's business. The Supplier shall, and shall use all its reasonable commercial endeavors to ensure that its Affiliates, cooperate with the Global Fund and its agents in the conduct of such audit, including by making staff available to answer questions, providing reasonable use of facilities to assist with the audit and producing originals of documents if deemed relevant by the Global Fund.

iv. *Supplier Audits and Undertakings*: In addition, the Supplier shall audit any unaffiliated subcontractor for such compliance in accordance with the Supplier's internal audit policies, and shall permit the Global Fund to review any such audit report in connection with the Global Fund's audits as contemplated above. The Supplier shall use all its reasonable commercial endeavors to obtain the consent of any such subcontractor for the Global Fund to participate in any audit conducted by the Supplier, or to conduct its own audit of such subcontractor.

8.3 Additional Record-Keeping Obligations. The recordkeeping provisions contained in this Section 8 are in addition to, and complementary of, the recordkeeping provisions in Section 7 (regarding performance management). The Supplier shall comply with all record keeping obligations in this Agreement.

8.4 Inspections of Manufacturing Activities. At the Global Fund's reasonable request and upon not less than seven calendar days' written notice to the Supplier, the Global Fund, or its agents shall have the right to inspect the Supplier's manufacturing and storage facilities at any time during the Term.

9. SUPPLIER INSURANCE

9.1 Supplier Insurance Obligations. During the Term, and thereafter for a period for the later of either (i) three years after the Term or (ii) three years after delivery of the last Supplier Product supplied by the Supplier during the Term, the Supplier shall, and shall ensure that each of its Affiliates shall, maintain in force insurances policies that are in accordance with sound international commercial practice for persons engaged in businesses substantially similar to that of the Supplier (including product and third party liability insurance) and which cover relevant risks.

9.2 Access to Policy Details. Within 10 calendar days of the Global Fund's written request, the Supplier shall promptly provide the Global Fund with copies of the insurance copy certificates and details of the policies referred to in Section 9.1.

9.3 Material Policy Changes. The Supplier shall immediately notify the Global Fund in writing if any insurance policy required by this Agreement is (or will be) cancelled or its terms are (or will be) subject to any material change.

9.4 Liability. The Supplier's liability under this Agreement shall not be deemed to be released or limited by the Supplier taking out the insurance policies referred to in Section 9.1.

10. SUPPLIER CONDUCT AND ACKNOWLEDGEMENTS

10.1 Supplier Conduct. For all activities conducted pursuant to this Agreement, the Supplier shall:

i. comply with, and conduct its activities that involve the Global Fund, including pursuant to this Agreement, in a manner consistent with the Supplier Code of Conduct;

ii. comply with all applicable laws, including applicable laws of the countries for which Supplier Products are procured, delivered, and used (including procurement laws, regulations, and procedures applicable to the relevant Principal Recipients); and

iii. not induce any person to breach any Global Fund policy (including the Supplier Code of Conduct or the Policy on Ethics and Conflict of Interest for Global Fund Institutions) or any laws, including applicable laws of the countries for which Supplier Products are procured, delivered, and used (including procurement laws, regulations, and procedures applicable to the relevant Principal Recipients.

10.2 Supplier Acknowledgements. The Supplier acknowledges and agrees to the following:

i. The investigative, decision-making, and sanctions policies and processes of the Global Fund, including the activities of its Inspector General and the Supplier Code of Conduct, and consideration of any findings of fraud or abuse by the Global Fund Sanctions Panel should the Global Fund in its discretion choose to refer the matter to the Sanctions Panel, can and will apply to (i) the RFP, (ii) this Agreement; (iii) all relevant Transaction Agreements and (iii) any other matter relating to procurement of HIV Viral Load Diagnostic Equipment with Global Fund resources, and these processes may include, without limitation, public disclosure at the Global Fund's full discretion of any findings and/or decisions; and

ii. The Global Fund has full discretion to audit or investigate any potential fraud or abuse, whether occurring in the past, present, or future, associated with the procurement of HIV Viral Load Diagnostic Equipment with Global Fund resources, and the Global Fund at its full discretion may publish the findings of such investigations; through participation in the RFP, the Supplier acknowledges these processes and will not challenge in any setting the investigation by the Global Fund of potential fraud or abuse associated with procurement of HIV Viral Load Diagnostic Equipment with Global Fund resources, the dissemination of investigation findings and the responses undertaken by the Global Fund to findings of fraud or abuse, in all cases whether occurring in the past, present, or future.

10.3 Anti-Corruption. The Supplier shall maintain and enforce standards of conduct to govern the performance of it and its Affiliates' directors, officers and employees who are involved in the performance of activities under this Agreement to ensure that such persons do not engage in any practice set forth in Section 10.4.

10.4 Prohibitions. Prohibited activities include if such person:

i. participates in the selection, award or administration of a contract, in which the person, members of the person's immediate family or his or her business partners, or organizations controlled by or substantially involving such person, has or have a financial interest;

ii. participates in transactions involving persons, organizations or other entities with which or whom that person is negotiating or has any arrangement concerning prospective employment;

iii. offers, gives, solicits or receives, directly or indirectly, gratuities, favors, gifts or anything else of value to influence the action of any person involved in the procurement process or contract execution;

iv. misrepresents or omits facts in order to influence the procurement process or the execution of a contract;

v. engages in a scheme or arrangement between two or more suppliers, with or without the knowledge of the Supplier, designed to establish bid prices at artificial, non-competitive levels; or

vi. participates in any other illegal or corrupt practice.

10.5 Disclosure of Corruption/Prohibited Activities. If the Supplier has knowledge or becomes aware of any:

i. actual or potential conflict between the financial interests of any of it or its Affiliates' directors, officers and employees and that person's duties under this Agreement; or

ii. any of the practices listed in Section 10.4,

the Supplier shall immediately disclose the actual or potential conflict of interest / prohibited activity directly to the Global Fund.

11. REPRESENTATIONS AND WARRANTIES

11.1 General Representations and Warranties. Each Party represents and warrants to the other Party as of the Effective Date and on a continuing basis during the Term that:

i. Such Party is validly incorporated, in existence and duly registered under the laws of its jurisdiction of incorporation and it has full power to conduct its business as conducted at the date of this Agreement;

ii. The execution, delivery and performance of this Agreement by such Party shall have been duly authorized by all necessary action on the part of such Party, including all corporate authorizations and all other governmental, statutory, regulatory or other consents, licenses, authorizations, waivers or exemptions required to empower it to enter into and perform its obligations under this Agreement;

iii. This Agreement, when executed and delivered by such Party in accordance with its terms, will be a legal, valid and binding obligation of such Party, enforceable against such Party in accordance with its terms, except as such enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity; and

iv. Such Party's execution, delivery and performance of this Agreement shall not constitute a violation, breach or default under any constitutional document, contract, instrument, obligation or agreement to which it is a Party or by which it is bound, and will not conflict with or violate any Applicable Laws, rule, regulation, judgment, order, decree of any governmental agency or court having jurisdiction over it or its assets or property.

11.2 Supplier Representations and Warranties. The Supplier represents, warrants and covenants to the Global Fund as of the Effective Date and on a continuing basis during the Term (and, with respect to each Supplier Product supplied under this Agreement, for no less than three years from the first usage of that Supplier Product) that:

i. Supplier Products delivered under this 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 Agreement and supply of each Supplier Product shall:

1. conform to the requirements of this Agreement and the relevant Transaction Agreement;

2. be produced and processed in compliance with the quality standards in Section 3.2;

3. be produced and processed in compliance with all Applicable Laws;

4. comply with the Supplier Code of Conduct;

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 Global Fund, the procuring agent/entity (if applicable) and the relevant Principal Recipient pursuant to this Agreement, 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 Global Fund, the procuring agent/entity (if applicable) and the relevant Principal Recipient 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 Recipient Country(ies) relevant to the applicable Transaction Agreement at the time of order placement indicating its ability and willingness to supply the Supplier Product. The Global Fund or the relevant Principal Recipient, as the case may be, shall have the option to proceed or cancel the pertinent agreement.

v. The Supplier's performance of this 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 Agreement effectively in the places and in the manner in which it is carried on pursuant to this 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 each Principal Recipient is required to comply with the applicable grant agreement between the Global Fund and the Principal Recipient (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.

12. CONFIDENTIALITY, PUBLIC ANNOUNCEMENTS, AND USE OF GLOBAL FUND LOGO

12.1 Confidentiality Obligation. In consideration for, and as a condition of, one Party agreeing to provide Confidential Information to the other Party, each Party shall promptly (and shall ensure that each of its Representatives shall) maintain Confidential Information in confidence and not use or disclose that Confidential Information to any person except as this Section 12 permits, or with the prior written approval of the other Party.

12.2 Disclosure to Representatives. Each Party undertakes that it shall only, and shall use all its reasonable commercial endeavors to ensure that its Affiliates shall only, disclose Confidential Information to Representatives if it is reasonably required for purposes connected with this Agreement or, with respect to the Global Fund, its sourcing activities and internal governance requirements, and only if the Representatives are informed of the confidential nature of the Confidential Information. Each Party shall remain responsible for any failure by any of its Representatives to treat such Confidential Information as required under this Section 12.

12.3 Disclosure of Agreement Terms to Implement the Agreement. Notwithstanding anything contained herein to the contrary, each of the Parties may disclose the terms of this Agreement to other persons as needed to implement the arrangements and programs contained in this Agreement, provided such other persons retain such information on a similar confidentiality basis. This may include disclosure to Transaction Customers, Principal Recipients, Global Fund Staff members, Supplier Staff members, and other organizations involved in HIV Viral Load Diagnostic Equipment procurement for public health or humanitarian purposes.

12.4 Obligation to Destroy or Return. Upon the termination of this Agreement and the receipt of a written notice from the other Party, each Party undertakes to take all reasonable measures to destroy or return to the other Party all Confidential Information in written form.

12.5 Permitted Disclosure. This Section 12 shall not prevent disclosure by a Party or its Representatives to the extent that it can demonstrate that the:

i. disclosure is of Confidential Information which was lawfully in the possession of that Party or any of its Representatives (in either case as evidenced by written records) without any obligation of secrecy or confidentiality prior to its being received or held;

ii. disclosure is of Confidential Information which has previously become publicly available other than through that Party's fault (or that of its Representatives);

iii. disclosure is of Confidential Information which was independently developed by the disclosing Party;

iv. disclosure is required by law, rule or regulation (including the rules of a professional body), stock exchange or any regulatory, Governmental Authority (including any tax authority or anti-trust body) having applicable jurisdiction (provided that the disclosing Party shall if permitted by law first inform, at the disclosing Party's own cost and expense, the other Party of its intention to disclose such information and take into account the reasonable comments of the other Party and take all reasonable steps to preserve the confidentiality of the information);

v. disclosure is permitted under this Agreement; or

vi. disclosure is legally required for the purpose of any arbitral or judicial proceedings arising out of or in connection with this Agreement.

12.6 Permitted Disclosure by the Global Fund. The Supplier acknowledges that the Global Fund may disclose the Pricing and material terms on which the Supplier Products are provided under this Agreement, including through means of disclosure of communications to Global Fund Board, Committee, and Advisory Group Members, employees, and Constituencies; posting such information on the Global Fund's website; reporting such information through the Global Fund's Price and Quality Reporting system ("PQR"); or through any other media.

12.7 Survival of Obligations. The obligations of confidentiality set out in this Section 12 shall survive termination or expiration of this Agreement for a period of seven years.

12.8 Public Announcements. Unless otherwise permitted under this Agreement, neither Party shall issue any press release or make any public announcement or statement regarding this Agreement, or the Party's relationship with the other Party without the prior written approval of the other Party, which shall not be unreasonably withheld or delayed.

12.9 Use of Global Fund Name and Logo. The Supplier shall not, and shall ensure that its Affiliates do not, use the Global Fund name or logo on any Supplier Product or other product.

13. LIABILITY AND INDEMNITY

13.1 General Indemnification by the Supplier. The Supplier shall indemnify and hold harmless the Global Fund (and its Representatives) on demand from and against any and all damages, liabilities, claims, losses, costs, charges, judgments, disputes and expenses (including reasonable legal fees) (***Loss***) that are sustained, suffered or incurred by the Global Fund (or its Representatives), that result or arise from or are connected in any way with:

i. the performance by the Supplier or any of its Affiliates or any of their Representatives under this Agreement (including a breach of this Agreement or any Supplier Order);

ii. any third party product liability claim in relation to any Supplier Product;

iii. any defective products (including any Non-Conforming Products) in any Supplier Product;

iv. any non-compliance by the Supplier or any of its Affiliates or any of their Representatives with any technical requirements applicable to any Supplier Product;

v. any use by the Supplier (and/or relevant sub-licensee) of the Global Fund Logo; and/or

vi. any claim of infringement or violation of a patent, design, trade-name, trademark, trade secret, or other intellectual property right of any third party.

13.2 Prior Consent Required. The Supplier shall not settle any matter covered by the indemnity contained in Section 13.1 in a manner that affects the rights of, or imposes any obligations on the Global Fund, without first obtaining the written approval of the Global Fund.

13.3 Limited Scope of Liability. Neither Party will be liable for indirect, incidental, consequential, special, exemplary, or punitive damages arising out of this Agreement or the exercise of its rights hereunder, or for lost profits arising from or relating to any breach of this Agreement, regardless of any notice of such damages.

13.4 Global Fund Not Responsible for Third Party Claims. The Global Fund shall not be responsible for any third-party Loss which may arise in connection with, or as a result of, the conduct of the Supplier or any of its Affiliates or any of their Representatives, which are not directly caused by the negligence, fraud, or willful misconduct of the Global Fund.

13.5 Disclaimers. The Global Fund gives no guarantee, representation, or warranty to any person in connection with this Agreement, any Supplier Product, or any Supplier Order, and the

Global Fund does not accept responsibility or liability in any way in respect of any of these matters, unless expressly provided in this Agreement, in which case only to such extent as provided.

14. TERM, TERMINATION, EXPIRATION, AND SURVIVAL

14.1 Term. The initial term of this Agreement shall commence on the Effective Date and remain in effect until *[insert date]* (the ***Term***), unless otherwise terminated as expressly provided under the terms of this Agreement.

14.2 Renewal Term. This Agreement may be renewed by mutual agreement of the Parties for additional one year periods. In no event shall the total duration of this Agreement, including any such one-year renewal term(s), exceed five calendar years.

14.3 Termination by the Global Fund for Convenience. The Global Fund may terminate this Agreement in its sole discretion at any time upon no less than six months prior written notice to the Supplier. Any termination by the Global Fund pursuant to this Section 14.3 shall be without liability, except for the amount of any applicable volume commitment outstanding during the year of termination, for which the Global Fund will remain responsible per the terms of this Agreement.

14.4 Termination by the Global Fund due to Specified Events. The Global Fund shall have the right, but not the obligation, to terminate this Agreement with immediate effect by written notice to the Supplier in the event of any of the following:

i. A Change of Control of the Supplier;

ii. The occurrence of a Force Majeure Event which has a material effect on the Supplier's ability to perform under this Agreement or the need for the Global Fund or its Principal Recipients to procure Health Products under this Agreement; or

iii. The Supplier's material breach of Section 10 ("Supplier Conduct and Acknowledgements"), including (i) a finding by the Global Fund's Office of the Inspector General that the Supplier has engaged in fraudulent or corrupt practices or (ii) a finding by the Global Fund's Sanctions Panel that the Supplier has materially violated the Supplier Code of Conduct.

14.5 Termination by Either Party due to the other Party's Uncured Default. If one Party (the ***Breaching Party***) breaches or fails in the observance or performance of any representation, warranty, guarantee, covenant or obligation under this Agreement to a material extent (a ***Material Breach***), the other Party (the ***Nonbreaching Party***) may provide a written notice of Material Breach to the Breaching Party, providing 30 calendar days for the Breaching Party to cure such Material Breach, if such Material Breach can be cured. If the Material Breach is cured in accordance with the provisions of this Section 14.5, the notice of Material Breach shall be of no effect. If the Material Breach is not cured in accordance with the provisions of this Section 14.5 (a ***Default***), this Agreement shall, absent written agreement to the contrary by the Nonbreaching Party, terminate upon the expiry of the 30 calendar day cure period, without the requirement of the Nonbreaching Party to provide any additional notice to the Breaching Party.

14.6 Termination by either Party due to a Financial Event of the other Party. Either Party may terminate this Agreement by giving notice in writing to the other Party, stating the effective date of such termination, if:

i. the other Party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or mature or admits inability to pay its debts;

ii. the other Party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors;

iii. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other Party;

iv. a creditor or encumbrancer of the other Party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within 14 calendar days;

v. an application is made to court, or an order is made, for the appointment of an administrator or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other Party;

vi. a floating charge holder over the assets of that other Party has become entitled to appoint or has appointed an administrative receiver;

vii. a person becomes entitled to appoint a receiver over the assets of the other Party, or a receiver is appointed over the assets of the other Party; or

viii. any event occurs, or proceeding is taken, with respect to the other Party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in Sections (i) through (vii) above.

14.7 Consequences and Results of Termination.

i. With the exception of Section 14.3 ("Termination by the Global Fund for Convenience"), if the Global Fund terminates this Agreement pursuant to the terms of this Section 14, all obligations and liabilities of the Global Fund under this Agreement, including regarding any outstanding volume commitment or allocation (if applicable), shall be deemed to be met and satisfied, with no outstanding claim or liability for the Global Fund effective as of the date of the Supplier's receipt of the Global Fund's notice of termination.

ii. Nothing contained herein shall be construed to limit the Global Fund's ability to pursue any remedy available in law or in equity with respect to any breach of this Agreement by the Supplier.

14.8 Global Fund's Remedies upon Supplier's Uncured Default or Termination without Cause.

i. If the Supplier terminates this Agreement in violation of its terms, or if the Global Fund terminates this Agreement pursuant to Sections 14.4, 14.5, or 14.6, the Global Fund and/or Principal Recipients may be required to purchase substitute Supplier Products from other Suppliers for the remainder of the Term, including at rates which do not reflect any volume discounts and other pricing terms of this Agreement.

ii. In the event of a termination and resulting purchase of substitute Supplier Products as described in Section 14.8.i, and if the Global Fund has made a volume commitment to the

Supplier, then the Global Fund's available remedies from the Supplier under this Agreement, subject to the terms of this Agreement, shall include monetary compensation as follows: for each such substitute Supplier Product procured, the Supplier will reimburse the difference between the cost paid for the substitute Supplier Product and the cost of an equivalent Supplier Product per the terms of this Agreement.

iii. The remedy described in Section 14.8.ii shall be limited to a total quantity of substitute Supplier Products equal to the amount of the volume commitment for which Confirmed Orders have not been established as of the time of the termination of the Agreement.

14.9 Effect of Expiry/Termination. The following provisions are applicable to or address the expiry or earlier termination of this Agreement.

i. *Transition Period*: Upon the expiry or termination of this Agreement, at the Global Fund's request, the Supplier shall continue to supply Supplier Products on the terms of this Agreement for a transition period of up to six months, at then-established prices.

ii. *Confidentiality*: Upon the expiry or termination of this Agreement, and following expiry of the transition period referred to above, if applicable, each Party shall promptly return to the other Party all Confidential Information of the other Party or confirm in writing to the other Party that it has destroyed all such Confidential Information in its possession (except to the extent that retention of any such confidential information is required for audit purposes or under Applicable Laws).

iii. *Liability*: Except as otherwise stated herein, expiry or termination of this Agreement for any reason shall not release either Party from any liability which at such time has already accrued or which thereafter accrues from a breach or default prior to such expiration or termination, nor affect in any way the survival of any other right, duty or obligation of either Party which is expressly stated elsewhere in this Agreement to survive such termination or expiry. In the case of a termination by either Party under this Section the non-defaulting Party may pursue any remedy available in law or in equity with respect to such breach, subject to the terms detailed.

iv. *Survival*: The following Sections shall survive the expiration or earlier termination of this Agreement, including, as applicable, in accordance with the respective terms thereof: 8 (Supplier Record Keeping, Access, and Audit); 9 (Supplier Insurance); 11 (Representations and Warranties); 12 (Confidentiality, Public Announcements, and Use of Global Fund Logo); 13 (Liability and Indemnity); 14 (Term, Termination, Expiration, and Survival); 16 (Governing Law and Dispute Resolution); and 17 (General).

15. AMENDMENT

15.1 No amendment of this Agreement shall be valid unless it is in writing and duly executed by or on behalf of both of the Parties. There are two forms of amendment to this Agreement, as follows:

i. *Operational amendments* are revisions to Schedules A, B or C (including changes to Supplier Products, Volume Commitments, pricing, nominated Transaction Customers and nominated Affiliates). These operational amendments will be enacted through an updated version of the relevant Schedule(s) which is signed by an Authorized Officer of each Party and which is effective as of the date stated therein.

ii. *Contractual amendments* are formal amendments to the body of this Agreement. They will be enacted through a formal amendment to the Agreement which is signed by an Authorized Officer of each Party and which is effective as of the date stated therein.

16. GOVERNING LAW AND DISPUTE RESOLUTION

16.1 Governing Law. Any matter relating to the interpretation or application of this Agreement which is not covered by its terms shall be resolved by reference to the UNIDROIT Principles of International Commercial Contracts (2004).

16.2 Executive Resolution. Without prejudice to Section 16.3, if any dispute, controversy or claim arises out of or in connection with this Agreement, including the breach, termination or invalidity thereof (a ***Dispute***), the Parties agree that before submitting such Dispute to arbitration as set out in Section 16.3, representatives of each Party shall, for a period of 30 calendar days after such Dispute is formally submitted to either of such representatives in writing, attempt in good faith to negotiate the resolution of the Dispute.

16.3 Arbitration. Subject to Section 16.2, all Disputes shall be finally settled by arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules in force from time to time. There shall be one arbitrator. The appointment authority for such arbitrator shall be the International Chamber of Commerce International Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English.

17. GENERAL

17.1 Relationship of the Parties. The relationship of the Global Fund and the Supplier established by this Agreement is that of independent contractors, and nothing contained herein shall be construed to:

i. give either Party any right or authority to create or assume any obligation or make any representation of any kind on behalf of the other; or

ii. constitute the Parties as partners, joint venture participants, fiduciaries, co-owners or otherwise as participants in a joint or common undertaking.

17.2 Further Assurances. Each of the Parties shall perform (or procure the performance of) all further acts and things and execute and deliver (or procure the execution and delivery of) such further documents, as may be required by law or as may be necessary or reasonably required to implement and give effect to this Agreement.

17.3 Performance by Affiliates. Each of the Supplier and the Global Fund acknowledges that certain obligations of the Supplier under this Agreement may be performed by Affiliates of the Supplier. The Supplier shall remain responsible for the performance of its obligations under this Agreement, including performance by any of its Affiliates of such obligations. Any Affiliate of the Supplier which performs any of the Supplier's obligations under this Agreement will be deemed to have accepted and be bound by the relevant terms and conditions of this Agreement, including, without limitation, the dispute resolution procedures set out in Section 16. For purposes of this Section 17.3, the Affiliates of the Supplier that are authorized to execute Transaction Agreements on behalf of the Supplier are as indicated in Schedule E.

17.4 No Third Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the Parties hereto, their Affiliates and their respective successors and permitted assigns. Except for the prior sentence, nothing herein, express or implied, is intended to or shall confer upon any other person any legal or equitable right, benefit or remedy of any nature whatsoever.

17.5 Entire Agreement. It is the mutual desire and intent of the Parties to provide certainty as to their respective future rights and remedies against each other by defining the extent of their mutual undertakings as provided herein. The Parties have, in this Agreement (including the Schedules), incorporated all representations, warranties, covenants, commitments and understandings on which they have relied in entering into this Agreement, and, except as provided for herein, neither Party makes any covenant or other commitment to the other concerning its future action. Accordingly, except as expressly provided in this Agreement, this Agreement (including the Schedules):

i. constitutes the entire agreement and understanding between the Parties with respect to the subject matter and there are no promises, representations, conditions, provisions or terms related thereto other than those set out in this Agreement; and

ii. supersedes all previous understandings, agreements, and representations between the Parties, written or oral.

17.6 Assignment. Except with the prior written consent of the Global Fund, the Supplier shall not assign, transfer, charge, or otherwise deal with all or any of its rights under this Agreement. Any attempted assignment in violation of this Section 17.6 shall be null and void and of no effect. No assignment shall relieve the assigning Party of its obligations hereunder.

17.7 Severability. Each of the provisions of this Agreement is severable. If any such provision is held to be or becomes invalid or unenforceable in any respect under the law of any jurisdiction, it shall have no effect in that respect, the Parties shall use all reasonable endeavors to replace it in that respect with a valid and enforceable substitute provision the effect of which is as close to its intended effect as possible, and any such invalidity, in whole or in part, will not affect the validity of any other of its provisions.

17.8 No Waiver of Privileges and Immunities. Nothing in or related to this Agreement may be construed as a waiver, express or implied, of the privileges and immunities accorded to the Global Fund under international law, including international customary law, any international conventions, treaties or agreements, any national laws, including but not limited to the United States of America's International Organizations Immunities Act (22 United States Code 288), or the Headquarters Agreement between the Global Fund and the Swiss Federal Council dated 13 December 2004.

17.9 Conflict with other Agreements. If there is any conflict between the terms of this Agreement and any other agreement, this Agreement shall prevail (as between the Parties) unless:

i. such other agreement expressly states that it overrides this Agreement in the relevant respect; and

ii. both Parties are either also parties to that other agreement or otherwise expressly agree in writing that such other agreement shall override this Agreement in that respect.

17.10 Authorized Officer. The Supplier represents that the following person(s) (each an ***Authorized Officer***) are authorized to both (i) execute this Agreement (including any modification or amendment thereto), and (ii) give notices under this Agreement, for and on behalf of the Supplier:

[Mr] [Ms] [Name], [Title]

17.11 Notices. Any notice in connection with this Agreement shall be in writing in English and delivered by hand, fax, registered post or courier using an internationally recognized courier company. A notice shall be effective upon receipt and shall be deemed to have been received:

i. at the time of delivery, if delivered by hand, registered post or courier; or

ii. at the time of transmission if delivered by fax (and evidenced by proof of satisfactory transmission).

If notices are given by the Supplier by facsimile or email, the Supplier must deliver the original notice to the Global Fund and agrees to keep the Global Fund indemnified against any loss of any nature whatsoever arising to the Global Fund as a result of acting upon facsimile or email instructions. The Global Fund accepts no responsibility for any Loss caused as a result of non-receipt of any facsimile or email notice or instruction. The Global Fund may rely conclusively and shall incur no liability in respect of any action taken upon any notice, consent, request, instructions or other instrument believed in good faith to be genuine or to be signed by an Authorized Officer (as defined above) or other properly authorized person on behalf of the Supplier.

17.12 Address Details. The addresses and fax numbers of the Parties for the purpose of Section 17.11 are as set out below, unless altered by written notice to the other Party in accordance with the terms of this Agreement:

The Global Fund	**Address:** The Global Fund to Fight AIDS, Tuberculosis and Malaria Chemin de Blandonnet 8 1214 Vernier, Geneva, Switzerland To the attention of: Chief Procurement Officer And a copy to: Head, Legal and Compliance	**Fax and Telephone:** Fax: + 41-58-791-1701 Tel: + 41-58-791-1700
The Supplier	**Address:** [●] For the attention of: [●] And a copy to [●]	**Fax and Telephone:** Fax: [●] Tel: [●]

17.13 Failure to Exercise. No failure or delay by either Party in exercising any right or remedy provided by law or under this Agreement shall impair such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy. Remedies provided herein are cumulative and not exclusive of any remedies provided at law.

17.14 Interpretation. The following rules apply to this Agreement:

i. References to:

1. Sections or Schedules are, unless otherwise specified, references to Sections of, and Schedules to, this Agreement;

2. any statutory or other legislative provision shall be construed as including any statutory or legislative modification or re-enactment thereof, or any provision enacted in substitution therefor;

3. any agreement or instrument shall include such agreement or instrument as it may from time to time be amended, supplemented or substituted;

4. the words "includes" and "including" shall be construed without limitation; and

5. month are references to a period starting on one day in a calendar month and ending on the numerically corresponding day in the next calendar month (and references to "months" shall be construed accordingly) or, if there is no such numerically corresponding day in that month, ending on the last day of that month;

ii. headings are for ease of reference only; and

iii. where the context so admits, words importing the singular number only shall include the plural and vice versa, and words importing neuter gender shall include the masculine or feminine gender.

17.15 Costs. Except as otherwise provided in this Agreement, each Party shall be responsible for its own costs, charges and other expenses (including all legal, accounting and other advisory fees) incurred in connection with the negotiation, execution and performance of this Agreement, including any such expenses incurred by their Affiliates.

17.16 Counterparts. This Agreement may be executed in any number of counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of an executed counterpart signature page of this Agreement by email (as a PDF attachment) or fax shall be as effective as delivery of a manually executed counterpart of this Agreement.

[*Signatures follow.*]

IN WITNESS WHEREOF, the Global Fund and the Supplier have caused this Agreement to be executed as of the date first written above by their respective officers thereunto duly authorized.

Executed for and on behalf of the Global Fund to Fight AIDS, Tuberculosis and Malaria:	**Executed for and on behalf of [●]:**
Signature: _____	Signature: _____
Name: _____	Name: _____
Title: _____	Title: _____
Date: _____	Date: _____

SCHEDULE A

Supplier Products

[*To be determined.*]

SCHEDULE B

Supplier Products Pricing and any Committed or Allocated Volumes

[*To be determined.*]

SCHEDULE C

Additional Transaction Customers Eligible to Purchase Supplier Products

[*To be determined.*]

SCHEDULE D

Supplier Reporting Format Template

[*To be determined.*]

SCHEDULE E

Affiliates Authorized to Execute Transaction Agreements

[*To be determined.*]