

(COUNTY OF MONTERRADO)
(REPUBLIC OF LIBERIA)

GOODS PURCHASE & DELIVERY AGREEMENT

This Contract for the Purchase of GENEXPERT® Xpert Xpress SARS-CoV-2 - PCR TESTS dated this 19th day of July 2021 is made and entered into by and between the Ministry of Health/ Incident Management System IMS, Republic of Liberia, West Africa (herein after referred to as "the Ministry"), represented by the Minister, Dr. Wilhelmina S. Jallah of the City of Monrovia, Montserrado County, Republic of Liberia and Dutch B.V., Middenweg 146, 1097BV AMSTERDAM 34311026, the Netherlands, represented by its Managing Director, Mr. Peter Wiemers of the City, and Republic aforesaid, hereinafter referred to as "Seller". Collectively the Ministry and the Seller shall hereinafter be referred to as the "Parties": and

WITNESSETH:

WHEREAS, the Ministry/ Incident Management System(IMS) wishes to purchase from the Seller five thousand one hundred (5100) pieces of GENEXPERT® Xpert Xpress SARS-CoV-2 - PCR TESTS. This testing platform is a real time polymerase chain reaction base which amplifies fragment of the virus for detection. It's one of the confirmatory and/or gold standards testing methodology being used in Liberia, , and

WHEREAS, the Ministry selected the Seller through the Sole Source method as provided by Part V chp46 (section 55, page 55) of the amended and restated Public Procurement Concession Act of 2010 of Liberia and the Seller emerged as the Sole Bidder. Further, the Seller represents and Warrants to the Ministry that, it has developed Goodwill and has acquired manufacturer's franchise to deal in the sale of said GENEXPERT® Xpert Xpress SARS-CoV-2 - PCR TESTS under this Agreement, and

WHEREAS, the Ministry has procured the services of the Seller for the purpose supra and the Seller has accepted the Ministry's offer and represents and warrants to the Ministry that it is in the business of dealing and or Selling the aforementioned GENEXPERT® Xpert Xpress SARS-CoV-2 - PCR TESTS, is experience, willing, and ready to supply the GENEXPERT® Xpert Xpress SARS-CoV-2 - CPR TESTS described in this contract and all of its annexes, and has a valid registration/license required under the applicable laws, rules and regulations for doing business in Liberia,

NOW, THEREFORE, in consideration of their mutual interests, promises, warranties and covenants set forth herein, the parties hereto, intending to be legally bound, hereby agree as follows:

PART I
SPECIFIC CONDITION

SECTION 1. SERVICES

Effective as of the commencement date below stated in section 2, the Ministry contracts the services of the Seller and the Seller accepts the contract with the Ministry upon the terms and conditions hereafter set forth.

SECTION 2. TERM OF THE SERVICE

The service of the Seller under this Agreement shall commence as of July 20, 2021 and terminates on December 31, 2021 which term may be referred to as "The Contractual Period".

SECTION 3 RESPONSIRILITIES OF THE PARTIES.

3.2. The Seller Shall:

- **Ensure delivery time to the Ministry be within 30(fifteen) days maximum upon receipt of Purchase Order.**

3.3. The Seller shall ensure that the Test Kits to be supplied meets the technical specifications as provided for in the Ministry's /IMS request for bid and the Seller's bid proposal

3. 4. Technical Specifications

The Seller shall ensure that the Test Kits to be supplied meet the required technical specifications herein attached as annex 2

SECTION 4. CONSIDERATION

In consideration for the supply and delivery of the Test Kits described herein and the attached annexes of this contract, the Ministry shall pay or cause to be paid to the Seller the aggregate price or contract value, US\$171, 230.00(One hundred seventy one thousand two hundred thirty United States dollars) after satisfactory performance of the Seller's obligations in Section 3 above.

SECTION 5. RISK AND DELIVERY:

Subject to Sub-section 3.2, Title to and risk in the Test Kits will pass to the Ministry only after the Ministry has received and accepted the Test Kits.

SECTION 6 CONTRACT DOCUMENT

This document and all annexes hereto together with the following named documents which are incorporated herein by reference constitute the entire contract (herein referred to as the "contract" or this "Contract" between the Ministry and the Seller.

The Contract documents are taken as complementary of one another, but in case of ambiguities discrepancies or inconsistencies among them, the contract shall be interpreted on the basis of the following order of priority:

- This Contract
- The Ministry's request for Sole Source (Annex 1)
- The Bid/Proposal submitted by the Seller (Annex 2)

SECTION 7: WARRANTY

The Seller warrants that the product (Test Kits) to be supplied to the Ministry/IMS under this agreement shall:

- Be new;
- Be of merchantable quality;
- Be free from defects;
- Be fit for the intended purpose;
- Be of good material;
- Meet the needs of the Ministry/IMS as set out in the Ministry's tender for the provision of the Supply of five thousand one hundred (5,100) Test Kits.
- Conform to the technical and quality standard and specifications as set out in Annex 2 hereto,
- Be safe, of good quality and free from any defect in manufacturing or material,
- Correspond strictly with any and all representation, descriptions, and specifications given by the Seller

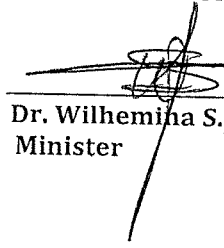
IN WITNESS WHEREOF, the parties have here to set their hands and affixed their signatures on the day and date first above written.

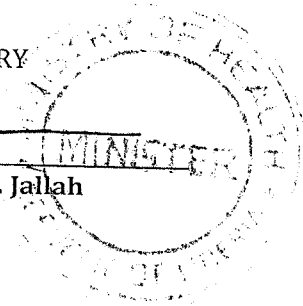
FOR THE SELLER


Mr. Peter Wisnors
Managing Director



FOR THE MINISTRY


Dr. Wilhemina S. Jallah
Minister



PART II GENERAL CONDITIONS

SECTION 8. LEGAL STATUS.

The parties are independent contracting parties, and nothing in this Agreement will make any Party the employee, Partner, agent, legal representative, trust or joint venture of the other for any purpose whatsoever, nor does it grant either party any authority to assume or to create any obligation on behalf of or in the name of the other without first obtaining expressed consent.

SECTION 9. DISPUTE SETTLEMENT

Any dispute arising out of or, in connection with this agreement, if attempts at settlement by negotiation have failed, either party may proceed for settlement in a court of competent jurisdiction in Liberia.

SECTION 10. TERMINATION OF CONTRACT

10.1. The Ministry may terminate this Agreement without cause within 15 days' written notice.

10.2. The Ministry may terminate this Agreement immediately with written notice to the Seller if:

- a) The Seller commits a fundamental breach of any of its obligations under this Agreement, and such breach is not remedied (if capable of remedy) within seven (7) days of notice in writing from the Ministry requiring that such breach be remedied;
- b) The Seller is in breach of any of its obligations under this Agreement, which breach is not a fundamental breach and such breach is capable of being remedied and has not been remedied within thirty (7) days of notice in writing from the Ministry requiring that such breach be remedied;
- c) For any reason the Seller is no longer able to perform its obligations under this Agreement;
- d) The Seller becomes insolvent or goes into administration, receivership or liquidation or enters into any arrangement or composition with its creditors or any action is taken for the appointment of an administrator or official manager or receiver of the assets of the Seller; or
- e) The Seller ceases or threatens to cease carrying on business.

10.3 the Seller may terminate this Agreement immediately on written notice to the Ministry if:

- a) The Ministry fails to pay or dispute any tax invoice in accordance with Section 4 and fails to remedy such breach within sixty (20) days of a notice from the Seller requiring the Ministry to remedy the same and stipulating that the Ministry is in breach of this Agreement; or
- b) The ministry become insolvent or goes into administration, receivership or liquidation or enters into any arrangement or composition with its creditors or any action is taken for the appointment of an administrator or official manager or receiver of the assets of the Ministry.

10.4 Termination of this Agreement is without prejudice to any accrued rights of either party as at the date of termination.

SECTION 11. GOVERNING LAWS

SECTION 13. INFORMATION DISSEMINATION

13.1 Neither Party will use information contained in this Agreement, exchanged in prior negotiations or any tender process for any purpose not contemplated by this Agreement. Each Party must, and ensure that its employees, agents and sub-contractors who need such access in order to perform their duties, receive this information under obligations of confidentiality.

13.2. Section 13.1 does not apply to the extent that:

- a) Either party is required by law to disclose the information;
- b) The information is public knowledge (and has not become public knowledge as a result of either party's breach of confidentiality); or
- c) The information was independently created by a party (and that party has evidence in writing that the information falls within this exception).

SECTION 14. INDEMNIFICATION

The Seller agrees to indemnify, defend and hold harmless the Ministry, and its respective directors, officers and employees from and against any and all loss, damage, injury, death, expense, proceeding, demand, cost, claim or liability incurred by the Ministry (including, without limitation, claims by third parties or claims by Seller employees), arising out of the acts, errors, omissions, breach of contract or negligence of the Seller or its employees, agents or sub-Sellers, including, without limitation, any alleged wrongful use or violation of any copyrighted work or literary property or patented invention, article or appliance. The Seller explicitly and expressly waives any right to immunity under applicable industrial insurance laws with respect to any action against the Ministry as provided above. These provisions shall expressly survive termination of this Agreement

SECTION 15. CONFIDENTIALITY.

In performance of this Agreement or otherwise, all information regarding the activities or business of the Ministry shall at all times be treated by the Seller as confidential and shall not be disclosed or circulated except with the prior written consent of the Ministry or to the extent that the information is or comes into public domain through no fault of the Seller, or that such disclosure is required by law.

SECTION 16 AMENDMENT.

Amendments and modifications to this Agreement shall be made in writing and signed by the parties or their respective authorized agents. The terms of this agreement shall extend to and be binding on The Parties, their successors in office, legal representatives and heirs during the life of the agreement.

SECTION 17 ACCEPTANCE

By their signatures below, the parties to this agreement indicate their understanding and acceptance of the terms herein.

SECTION 18 SEVERABILITY

Any provision hereof which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof and without affecting the validity or enforceability of such provisions in any other jurisdiction. Where applicable laws resulting in such prohibition or unenforceability may be waived, they are waived by the parties to the full extent permitted by law so this Agreement shall be valid, binding agreement, enforceable in accordance with its terms.

SECTION 19 NO CLAIMS

There are no claims, investigations or court proceedings or others in progress pending

The parties shall not be liable for any partial or complete failure to meet their commitments under the present Contract in the event of any circumstances outside of their control (force-majeure). The present contract shall be suspended for the period of duration of such circumstances (force-majeure). The Party affected by the force-majeure circumstances shall notify the other party within 3 days of their occurrence, provided the means of contact is available. If force-majeure circumstances continue for more than 3 months the present Contract may be terminated upon mutual consent among the Parties without any mutual claims.

No delay in exercising any right or remedy under this agreement shall be construed as a waiver of such right of remedy.

All covenants, agreement, representations and warranties made by the Seller in this agreement shall be considered to have been relied upon by the Ministry and shall survive the execution and delivery of this agreement, regardless of any investigation made by the Ministry or on its behalf and notwithstanding that the Ministry may have had notice or knowledge of any fact or incorrect representation or warranty at any time in the contract term, and shall continue in full force and effect ending five years subsequent.