

## GUARANTEE AND SERVICE AGREEMENT

## the undersigned:

- I. de Staat der Nederlanden, de minister van Volksgezondheid, Welzijn en Sport (*the State of the Netherlands, the Minister of Health, Welfare and Sports*), established in The Hague, legally represented by (10)(2e) (10)(2e) (10)(2e), hereinafter referred to as the "State";

and

- II. the private limited liability company **Thermo Fisher Scientific B.V.**, established and registered with the Chamber of Commerce under the number 32059695, legally represented by [ ], hereinafter referred to as the "Supplier";

## whereas:

- a) following a tender request of 26 March 2020 of the State, in cooperation with the Diagnostics Task Force, Supplier made an offer for the supply of consumables for RNA extraction and PCR analysis for COVID-19 tests;
- b) Supplier made the offer to the State mentioned in recital a) by means of a tender document, which is attached to this agreement (hereinafter referred to as the "Offer");
- c) the Offer was made in respect of the supply to laboratories in the Netherlands (hereinafter collectively referred to as the "Laboratories") which have available, or will have available shortly, the equipment required for carrying out COVID-19 tests;
- d) the State owns and has obtained by buying or taking on loan from several parties RNA extraction and PCR analysis equipment ("Equipment") for carrying out Covid-19 tests, which will be given on loan to Laboratories in order to enable those to carry out these tests;
- e) the Equipment will be installed and maintained by the Supplier, which will also be available to train the staff that will be using the Equipment;
- f) in order to facilitate the Laboratories in the testing of COVID-19, the State is prepared to guarantee to the Supplier the purchase of a minimum volume of RNA consumables for RNA extraction and PCR analysis for COVID 19 tests;
- g) the Laboratories shall test the aforementioned consumables and the Equipment in accordance with their protocol for COVID-19 diagnostics;
- h) it is essential for the public health to carry out a large amount of tests for Covid-19, in light of which the State is prepared to make the aforementioned arrangements with the Supplier;
- i) parties wish to lay down their agreement in this guarantee and service agreement;

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have agreed as follows:

**1. Definitions**

1.1. Capitalized words shall have the meaning mentioned below:

Consumables	the RNA consumables and PCR consumables required to perform COVID-19 tests using the Equipment, as stated in the Offer
Equipment	the equipment referred to in recital d)
Guarantee Period	the period referred to in clause 2.1
Laboratories	the laboratories referred to in recital c)
Offer	the offer referred to in recital b) as <b>annex 1</b>
Supply Agreement	the agreement attached to this agreement as <b>annex 2</b> with regard to the supply of Consumables, as well as the services related thereto
State	the party referred to under I at the top of this agreement
Supplier	the party referred to under II at the top of this agreement

**2. Subject of this agreement**

- 2.1. Supplier will install and maintain the Equipment that the State has given and will give on loan to Laboratories in order to carry out COVID-19 tests. Supplier will supply to the Laboratories the Consumables for RNA extraction and PCR analysis in order to carry out the COVID-19 tests.
- 2.2. The State, under the conditions set out in this agreement, shall give Supplier a conditional guarantee for a minimum purchase of Consumables during a period which commences as soon as the first order of Consumables has been placed by a Laboratory, and ends six months after the Equipment has been made suitable for carrying out COVID-19 tests at all Laboratories (the "Guarantee Period").
- 2.3. The Parties shall enter into this agreement under the resolutive condition (*ontbindende voorwaarde*) referred to in clause 8.4.
- 2.4. The recitals and annexes are integral parts of this agreement. In the event of conflict between provisions of the agreement and those of an Annex, the following order of priority shall apply:
- 2.1. this agreement;
- 2.1. the Offer (annex 1).
- 2.1. the Supply Agreement (annex 2);
- 2.1. the Service protocol (annex 3);
- 2.1. Protocol return of Equipment

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### **3. Consumables purchase guarantee**

- 3.1. The State guarantees to the Supplier that, during the Guarantee Period, the Laboratories shall purchase the total volume of Consumables that is required for (10)(1c) RNA extractions and (10)(1c) PCR analyses.
- 3.2. If it is determined after the ending of the Guarantee Period that the Laboratories have purchased less Consumables from the Supplier during the Guarantee Period than guaranteed by the State, the State shall place an order for Consumables of such a volume that the amounts guaranteed under clause 3.1 will be achieved, under the conditions as set out in the Supply Agreement. If the Supplier has not yet produced the Consumables at the end of the Guarantee Period or if the Supplier can supply the Consumables to a third party, the State is entitled to waive the order. In that case, the State shall pay the Supplier half of the nett amount it would be obligated to pay for the respective order.
- 3.3. The guarantee included in this clause shall only be in force if the Supplier fully complies with all obligations laid down in clause 4 of this agreement.
- 3.4. In the event that the State places an order under clause 3.2, this shall be deemed to be done for reasons of extreme urgency (*dwingende spoed*) as referred to in clause 2.32 paragraph 1 sub c of the Aanbestedingswet 2012 (Public Procurement Act 2012). The events with regard to the COVID-19 crisis, and in particular the specific manner in which those take place, must be considered unforeseeable for the State, which cannot be blamed for it. The equipment and consumables required for COVID-19 testing have to be delivered with the least possible delay, making it impossible to observe the normal time limits. There is a causal link between the COVID-19 crisis and the extreme urgency. Reference is made to the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01).

### **4. Obligations of the Supplier**

- 4.1. As soon as possible, and in any case within two working days after the Equipment has been delivered to a Laboratory, the Supplier shall, in consultation with such Laboratory, set up the Equipment and prepare it for carrying out COVID-19 tests.
- 4.2. After setting up the Equipment the Supplier shall together with the Laboratory perform an acceptance procedure, including a limited acceptance sampling/verification with a verification set consisting of positive, weak-positive and negative samples. In case of any defects, the Supplier shall remedy the defect or replace the installed Equipment within two working days. The replacement or repaired Equipment shall also be subject to the aforementioned acceptance procedure.
- 4.3. The Supplier shall on request of a Laboratory or the State provide adequate training at each Laboratory's location for all employees of the Laboratory who will work with the Equipment .
- 4.4. Supplier shall, at its own initiative as well as at the Laboratory's or State's request, during the term of this agreement and in accordance with annex 3 carry out all maintenance, upgrades and repairs which are required for the continuous correct operation of the Equipment in each Laboratory. Supplier shall comply with all reasonable instructions of the respective Laboratories, as well as with all applicable legislation and regulations.

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- 4.5. As soon as possible after the Equipment has been returned to the owner, which has given the Equipment on loan to the State, the Supplier shall in consultation with the owner set up and prepare the Equipment for its original purpose in accordance with Annex 4.
- 4.6. In the event of a service request, complaint or other notification with regard to any Equipment by a Laboratory to the Supplier, Supplier shall immediately notify the State, by means of an e-mail to [\(10\)\(2e\)@minvws.nl](mailto:(10)(2e)@minvws.nl) or any such other address as advised to Supplier by the State.
- 4.7. Supplier shall, during the Guarantee Period, be capable of supplying at least the volume of Consumables required for (10)(1c) RNA extractions and (10)(2e) PCR analyses to the Laboratories, whereby the Supplier shall be capable to supply these Consumables proportionally during the entire Guarantee Period, and shall at any one time have a stock of Consumables required for (10)(1c) RNA extractions and (10)(1c) PCR analyses.
- 4.8. Supplier shall report to the State, within two working days of each request from the State, and, in addition, on a monthly basis, for the first time thirty days after the start of the Guarantee Period and then each month thereafter, how many Consumables each of the Laboratories ordered in the preceding month, indicating the number of RNA extractions and PCR analyses which can be carried out with said ordered Consumables. These reports must be provided in writing to [\(10\)\(2e\)@minvws.nl](mailto:(10)(2e)@minvws.nl).
- 4.9. The supply agreements to be entered into between Supplier and each Laboratory shall not to the detriment of any Laboratory derogate from the legal and commercial arrangements as included in the Supply Agreement.
- 4.10. Supplier undertakes towards the State to fully comply with the supply agreements it will conclude with the Laboratories.
- 4.11. Without prejudice to Supplier's obligations under clause 4.7, in case of limited availability of Consumables, the State shall be authorised to instruct Supplier with regard to the distribution of Consumables between the Laboratories. Supplier shall comply with these instructions.

#### **5. Payment of services**

- 5.1. The State shall pay the Supplier for the services referred to under clause 4.1, 4.3, 4.4 and 4.5 in accordance with the Offer.
- 5.2. The order of the State to Supplier for the aforementioned services shall be deemed to be done for reasons of extreme urgency (*dwingende spoed*) as referred to in clause 2.32 paragraph 1 sub c of the Aanbestedingswet 2012 (Public Procurement Act 2012). The events with regard to the COVID-19 crisis, and in particular the specific manner in which those take place, must be considered unforeseeable for the State, which cannot be blamed for it. The equipment and consumables required for COVID-19 testing have to be delivered with the least possible delay, making it impossible to observe the normal time limits. There is a causal link between the COVID-19 crisis and the extreme urgency. Reference is made to the Guidance from the European Commission on using the public procurement framework in the emergency situation related to the COVID-19 crisis (2020/C 108 I/01).

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- 5.3. The Supplier shall submit the invoices for these services via the website [www.tradeinterop.com/vws-kern](http://www.tradeinterop.com/vws-kern), [www.tradeinterop.com/vws-kern](http://www.tradeinterop.com/vws-kern) referring to number (10)(2g) (10)(2g).

The Overheidsidentificatienummer (OIN) for VWS kern departement is 0000002003182447001.

- 5.4. Supplier shall not charge any costs to the Laboratories, except where explicitly so provided in the supply agreement entered into with each Laboratory.

**6. Assignability**

- 6.1. Neither party may assign and/or transfer any right or obligation under this agreement to a third party without the written consent of the other party.

**7. Confidentiality**

- 7.1. Unless required by law or necessary in light of the objectives of this agreement, the parties shall i) maintain confidentiality with regard to the contents of this agreement, and ii) not publish, disclose or provide to third parties any information from this agreement.
- 7.2. Nothing in this agreement shall prevent the State from any disclosure required under the Wet openbaarheid van bestuur (*Freedom of information act*), to comply with the parliamentary right to put questions, or under a court order. No such disclosure shall constitute a default under this agreement.
- 7.3. The fact that this agreement has been concluded as well as the essence of this agreement may be disclosed by the State to the Staten-Generaal (parliament).

**8. Term and termination of the agreement**

- 8.1. This agreement shall enter into force on the date of signing of this agreement and shall be in force until the end of the Guarantee Period.
- 8.2. The State has the right to unilaterally extend this agreement, for the duration of six months, in which case the State guarantees to Supplier another minimum purchase for the volume of Consumables referred to in this agreement, and Supplier in turn guarantees that it shall be capable to supply such additional volumes of consumables referred to in clause 4.6. In case of extension of this agreement, all provisions of this agreement shall remain in force *mutatis mutandis*.
- 8.3. The parties waive their possible rights to either fully or partially terminate (*ontbinden, vernietigen of zich op nietigheid beroepen*) this agreement, by any means or by way of defence.
- 8.4. This agreement shall be entered into under the resolutive condition (*ontbindende voorwaarde*) that the test of the laboratories of the Consumables and the Equipment in accordance with their protocol for COVID 19 diagnostics is not successfully passed.

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**9. Miscellaneous**

- 9.1. This agreement shall be governed by Dutch law.
- 9.2. Any dispute that arises between the parties in relation to the explanation or application of this agreement, or any agreement resulting from this agreement, shall be settled by the competent court of the Hague, the Netherlands.

**Thus agreed and laid out in duplicate,**

\_\_\_\_\_  
State

Date:

Place:

\_\_\_\_\_  
Supplier

Date:

Place:

**ANNEX 1. SUPPLIER'S OFFER**

ANNEX 2. SUPPLY AGREEMENT

**ANNEX 3. SERVICE PROTOCOL**

## Premium contract

1. Application Support
  - Direct access to Application Scientist expert support by phone.
  - Guaranteed same day response by an application scientist expert via email.
  - On-site field application or Bioinformatics consultation at no cost to customer for the number of days indicated in quotation, if requested by customer during the plan period.
  - Guaranteed field application support on-site response time of 3 business days after qualification of the issue\*\*.
  - Service/Support will perform a control run (RNAseP) for on-site troubleshooting at no additional cost.
2. Field service
  - Includes all parts, labor and travel for unlimited breakdowns
  - One Planned Maintenance service visit per annum (if taken for 2x 6m)
  - FAST Response time - Guaranteed on Site within 24 hours
  - Free access to Technical and Application Support Helplines
  - Guaranteed call back within 4 working hours for breakdowns
  - Includes Pure Dye Calibration for QPCR instruments (one standard block)

**ANNEX 4. PROTOCOL BIJ TERUGPLAATSING TESTAPPARATEN**

De procedure voor installatie na terugplaatsing zoals deze wordt uitgevoerd door Thermo Fisher, is als volgt:

Wanneer een Testapparaat ( ook genoemd: instrument) gerelocaliseerd is en geïnstalleerd wordt bij de gebruiker zal de service/support dienst van Thermo Fisher:

- het instrument uitpakken en opstellen
- connecties lokaal of netwerk aansluiten en opzetten
- onderhouds historiek opvragen en evalueren
- calibratie status controleren en eventueel aanpassen
- een verificatie-run uitvoeren en interpreteren van om een correcte setup van het instrument na te gaan en af te vinken

Bij een herinstallatie worden bovenstaande handelingen uitgevoerd door de service/support dienst van Thermo Fisher op locatie met de toevoeging van:

- temperatuurs controle van heating cover en block
- hercalibratie van het instrument en de dyes.

En er wordt weer een verificatie-run gelopen en geëvalueerd ter aftekening van de performantie.

Indien het instrument in een ISO-gecertificeerde omgeving wordt geplaatst kan bijkomend geopteerd worden voor een uitgebreide en gedocumenteerde installatie & operationele qualificatie (IQ/OQ).