



## THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA

### Terms and Conditions for the Purchase of Goods and Services Revised May 01, 2023

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These Terms and Conditions for the Purchase of Goods and Services for the Global Fund (the “**Terms and Conditions**”) constitute an integral part of the Contract for the provision of the Goods and/or Services, to the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “**Global Fund**”) by the Supplier named in such Contract (the “**Supplier**”).

## 1. Contract

These Terms and Conditions are referred to in, or attached to, the relevant (1) Purchase Order (“PO”); (2) Indefinite Quantity Contract (“IQC”); or (3) Framework Agreement (“FA”), and any attachments thereto including the statement of work or terms of reference as applicable, and constitute an integral part of the contract for the provision of Goods and/or Services, to the Global Fund by the Supplier, (the “**Contract**”).

## 2. Definitions

The following words and expressions shall have the meanings hereby assigned to them. For the avoidance of doubt, capitalized terms used but not defined in these Terms and Conditions shall have the same meaning as where otherwise defined in the Contract.

- 2.1. **Confidential Information** means all information disclosed, conveyed or otherwise made accessible by a Disclosing Party to a Receiving Party, either directly or indirectly, in any form, whether in writing, oral, visual, electronic or otherwise, that is designated “confidential” by the Disclosing Party, or that the Receiving Party knows, or has reason to know, is not generally available to the public, including the fact that such information has been delivered to the Receiving Party, unless otherwise expressly provided under the Contract.
- 2.2. **Disclosing Party** means the Party that is providing Confidential Information.
- 2.3. **Dispute** means any dispute, controversy, claim, action, suit, litigation, proceeding, loss or complaint arising out of, relating to or having any direct or indirect connection with the Contract, including any dispute regarding the existence, validity, interpretation, performance, breach or termination thereof.
- 2.4. **Force Majeure** means an event beyond the control of either Party, which by its very nature could not have been foreseen by the relevant Party, or, if it could have been foreseen, was unavoidable, that prevents or impedes either Party from performing its contractual obligations under the Contract and includes without limitation; a natural disaster, lockout, foreign or civil war (declared or undeclared), sabotage, interference by civil or military authorities, terrorist act, failure of energy sources, financial crisis, significantly increased financial or economic exposure, or any other similar event. It shall not include ordinary unfavorable weather

conditions, and any other cause the effects of which could have been avoided with the exercise of reasonable diligence.

- 2.5. **Global Fund** refers to the Global Fund to Fight AIDS, Tuberculosis and Malaria, an international financing organization, with its headquarters located at Chemin du Pommier 40, 1218 Grand-Saconnex, Geneva, Switzerland.
- 2.6. **Goods** means the supplies, equipment or other items to be delivered by the Supplier, pursuant to the Contract, and includes any other Goods and/or Services, necessary to make the Goods operational or usable, including but not limited to installation, calibration and any similar ancillary services.
- 2.7. **Key Personnel** means the Supplier's Personnel who are considered essential by the Global Fund for the implementation of the Contract, including without limitation, those who have been: (i) proposed by the Supplier as part of the Supplier's proposal prior to the Contract, if any; and/or (ii) included in the Contract and defined as such.
- 2.8. **Party** refers to either the Global Fund or the Supplier, as the context requires. **Parties** refers both the Global Fund and the Supplier.
- 2.9. **Personnel** includes directors, officers, employees, consultants, and agents.
- 2.10. **Prohibited Practices** means (1) any prohibited practices as defined under the Global Fund Policy to Combat Fraud and Corruption<sup>1</sup>, (2) anti-competitive practices, and (3) instances of sexual exploitation, sexual abuse and sexual harassment (both of which are defined in the Global Fund's Code of Conduct for Suppliers<sup>2</sup>), in relation to this Contract.
- 2.11. **Purchase Order or PO** means the purchase order(s) issued by the Global Fund to the Supplier setting out the Global Fund's requirements for the Goods and/or Services, and including any attachments thereto, whether issued at the time of execution of the Contract or during its term (as may be amended or replaced from time to time).
- 2.12. **Receiving Party** means the Party that is receiving Confidential Information.

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<sup>1</sup> The Global Fund's Policy to Combat Fraud and Corruption, as available on the Global Fund's website at [https://www.theglobalfund.org/media/6960/core\\_combatfraudcorruption\\_policy\\_en.pdf](https://www.theglobalfund.org/media/6960/core_combatfraudcorruption_policy_en.pdf)

<sup>2</sup> The Global Fund's Code of Conduct for Suppliers, as available on the Global Fund's website at [https://www.theglobalfund.org/media/3275/corporate\\_codeofconductforsuppliers\\_policy\\_en.pdf](https://www.theglobalfund.org/media/3275/corporate_codeofconductforsuppliers_policy_en.pdf)

- 2.13. **Representatives** include Personnel, contractors, subcontractors, professional advisors and/or auditors.
- 2.15. **Services** means the work or services to be performed by the Supplier as more detailed in the Purchase Order and/or accompanying attachments including the statement of work and terms of reference, pursuant to the Contract, and includes any goods that are necessarily required as deliverables or that are resulting from the provision of the Services.
- 2.16. **Supplier** refers to the Party (includes individuals and other entities, whether public, quasi-public or private) that is contracted to deliver the Goods or perform the Services using its own means, methods or manner of accomplishing the desired result pursuant to the Contract.
- 2.17. **Taxation, Tax or Taxes** shall mean all forms of taxation whether direct or indirect and whether levied by reference to income, profits, gains, net wealth, asset values, turnover, added value, value added tax or other reference and statutory, governmental, state, provincial, local governmental or municipal impositions, duties, excises, tariffs, contributions and levies (including social security contributions and any other payroll taxes), imposed in any relevant jurisdiction (whether imposed by way of a withholding or deduction for or on account of tax or otherwise) and in respect of any person and all penalties, charges, costs and interest relating thereto.

### 3. Order of Precedence

If there is a conflict between these Terms and Conditions and any special conditions in the Contract (including any agreed modifications or deviations from these Terms and Conditions), then such special conditions shall govern, unless otherwise specifically indicated in the Contract.

### 4. Obligations of the Supplier

- 4.1. The Supplier shall perform the Services or provide the Goods, or both, according to the Global Fund's requirements and performance standards provided in the Contract in consideration for the payment of the Contract price. The Supplier shall also perform any services or include any items that are not specifically mentioned but are necessarily required to complete performance of the Contract, as if such services or items were expressly mentioned therein. Specific provisions applicable to the obligations of a Supplier of Goods are included in Annex B of these Terms and Conditions.

- 4.2. The timely provision of the Goods and/or Services, including commencement of the performance and delivery of the Goods or Services within the time period agreed by the Parties or on a specified date agreed by the Parties, shall be an integral part of the performance or delivery under the Contract.
- 4.3. The Supplier shall provide the Goods or perform the Services, or both and carry out its obligations under the Contract in a diligent manner and to the standard of skill and care expected of a qualified, competent and experienced supplier in the provision of goods and services of the nature set out in the Contract, including in accordance with all applicable professional practices and standards. In respect of any matter relating to the Contract or to the Goods or Services, the Supplier shall at all times support and safeguard the Global Fund's legitimate interests in any dealings with third parties.
- 4.4. The Supplier acknowledges and agrees that there may be additions, deletions or other changes that may affect the delivery of the Goods or performance of the Services during the term of the Contract. Upon receiving the Global Fund's written notice of any such changes, the Supplier shall promptly and in good faith accommodate those changes. For any material change to the specifications of the Goods or Services the Parties shall negotiate in good faith equitable adjustments to the amount payable to the Supplier and the delivery schedule under the Contract.
- 4.5. Promptly following any request thereof, the Supplier shall provide information and documentation reasonably requested by the Global Fund for the purposes of due diligence, including without limitation information and documentation confirming the identity, registration information, good standing, operating addresses, directors and officers and significant ownership interests in the Supplier or any of its Representatives.

## **5. Evaluation, Acceptance or Rejection**

- 5.1. To assess the adequacy of the Services or Goods, or compliance with the required standards, the Supplier shall allow the Global Fund (and any of its Representatives) to evaluate, test or inspect the Services or Goods regularly or randomly during normal business hours upon giving reasonable notice. The Supplier or its subcontractors shall furnish all reasonable facilities and assistance to the Global Fund (and any of its Representatives), including providing access to drawing and production data, as applicable, and other relevant documents at no cost to the Global Fund. The rights and obligations of the Parties under this section are in addition to any specific evaluations, tests or inspections specified in the Contract.

- 5.2. The Global Fund may reject the Services or Goods, or any part thereof, if it determines that they are inadequate or not conforming to the specifications provided in the Contract. The Global Fund may require the Supplier to either rectify, modify, or improve the Services or Goods, or any part thereof, as necessary and at no cost to the Global Fund, to meet the required standard.
- 5.3. The Supplier's consent to the evaluation or testing of the Services, or inspection of the Goods, or any part thereof, shall not release the Supplier from any of its representations, warranties and other obligations under the Contract.

## **6. Payment**

- 6.1. The Global Fund shall pay for all Services performed or Goods delivered, and any other amounts payable to the Supplier in accordance with the Contract. Such payment shall be made to the bank account notified in writing by the Supplier.
- 6.2. The Supplier shall ensure the information provided to the Global Fund for bank transfers is up-to-date, complete and accurate. Incorrect or out-of-date bank transfer information may result in delays arising from efforts to verify the information, and the Global Fund shall not be responsible for any loss, liability, cost or expense incurred by the Supplier relating to such delays or the provision of incorrect or out-of-date bank transfer information. In the event of any change or amendment to the bank account indicated in writing by the Supplier to which payments are to be made by the Global Fund, the Supplier must promptly provide written notice of such change or amendment to the Global Fund by duly completing and submitting to the Global Fund a *Supplier Creation Form* (which can be obtained from the Global Fund). The Global Fund shall not be liable for any loss, liability, cost or expense incurred by the Supplier due to payments made to such bank account before notification of the change is duly received and processed by the Global Fund. Furthermore, the Global Fund will recover from the Supplier upon re-issuance of the payment, any bank charges resulting from incorrect or out-of-date information provided by the Supplier, and/or any indirect costs such as losses due to exchange rate fluctuations.
- 6.3. The Supplier acknowledges and agrees that the Global Fund may refuse or delay to make payments under the Contract to: (i) a bank account that is not held in the name of the Supplier, (ii) specific banks based on limitation or sanction, and (iii) a bank account where the necessary full due diligence process of the Global Fund has not been completed. All payments shall be made in the currency indicated in the Contract. The Global Fund shall accept no liability whatsoever for any such refusal or delay and any delay in payments due to national or international restrictions relating to the making of payments to the bank account indicated in writing by the Supplier.

- 6.4. Subject to the provisions of the Contract on evaluation, acceptance and rejection, the Global Fund must receive and accept the relevant Services or Goods before the Global Fund becomes obliged to make any corresponding payment to the Supplier. For the avoidance of doubt, any payment made to the Supplier by the Global Fund shall not by itself be deemed as constituting acceptance of the Goods or Services by the Global Fund.
- 6.5. Unless indicated otherwise in the Contract, the Supplier shall, no later than thirty (30) calendar days following completed delivery or performance of the Services or Goods, transmit to the Global Fund a detailed invoice pertaining to each payment installment and any reimbursable expenses with supporting documentation (including, but not limited to, receipts, unless reimbursable expenses are being billed on an interim allowance arrangement basis) sufficient to permit the Global Fund to determine that the invoice is acceptable.
- 6.6. If the Supplier has been granted access to the iSupplier, the Supplier shall enter and upload to the portal all invoices in PDF format. If the Supplier is using E-invoicing, invoices are exchanged electronically between the Global Fund and the Supplier in an XML format. If access to the iSupplier or E-invoicing portals has not been granted, the Supplier shall send electronically all invoices in PDF format, as attachments to the following address: **TGFBilling@theglobalfund.org**. Each attachment shall contain only one invoice (with supporting documents if needed), which must include the Contract or applicable Purchase Order reference number, as the case may be.

The Global Fund reserves the right to request the originals of the invoices, receipts or any other documentation, at any time during the period set forth in Section 15.1.

- 6.7. Without prejudice and subject to Section 6.9 below, the Global Fund shall endeavor to settle each invoice submitted in accordance with this Section within thirty (30) calendar days after receipt of any such invoice, unless otherwise stipulated in the Contract.  
Invoices may be rejected and returned to the Supplier for correction and resubmission to the Global Fund for payment if they:

- 6.7.1. Are incorrectly addressed;

- 6.7.2. Do not include the correct Contract or applicable Purchase Order reference number, as the case may be;

- 6.7.3. Do not conform to the specifications described within the Contract; or



6.7.4. Do not conform to any numerical value referenced within the Contract or applicable Purchase Order, as the case may be;

6.8. Unless otherwise specified in the Contract or applicable Purchase Order, as the case may be:

6.8.1. Any expense or liability incurred by the Supplier will not be paid by the Global Fund unless it has been authorized or approved in writing by an authorized representative of the Global Fund prior to such expense or liability being incurred; and

6.8.2. The Supplier will be solely responsible for paying or arranging payment of any expense or meeting any liability that has not been approved in accordance with Section 6.8.1.

6.9. Any final payments to a Supplier that is an individual may be withheld pending the return of all Global Fund property and equipment, and in accordance with Section 8 (*Access to Global Fund's Premises and Equipment*).

6.10. The Supplier acknowledges that any purchase of goods or services under the Contract shall be exempt from Taxation in applicable jurisdictions, including in the European Union, United States and Switzerland.

6.11. The Supplier acknowledges and agrees that the Global Fund is proceeding with payment using the SHA (shared costs) payment option, meaning the Global Fund only bears the bank charges levied by its bank when executing the payment to the Supplier. All other charges (including intermediary, correspondent, or final bank) are to be borne by the Supplier.

## **7. Supplier's Personnel and Key Personnel (Service Contracts Only)**

### **7.1. Personnel:**

7.1.1 The Supplier shall be responsible for ensuring that the Personnel it assigns to perform the Services are reliable and competent and have all professional and technical experience, expertise, qualifications and registrations, acceptable to the Global Fund to effectively perform the obligations under the Contract.

7.1.2 If the Global Fund: (i) following the disclosure by the Supplier or any other person, finds that any of the Supplier's Personnel has committed serious misconduct or has been charged with having committed a criminal action; or (ii) has reasonable cause to be dissatisfied with the performance of any of the Supplier's Personnel, then the

Supplier shall, at the Global Fund's written request specifying the relevant grounds, promptly provide replacement Personnel with qualifications and experience acceptable to the Global Fund, and at no cost to the Global Fund.

7.1.3 The Supplier shall immediately notify the Global Fund upon knowing or suspecting that any of the Supplier's Personnel (including a subcontractor's Personnel) assigned or intended to be assigned to provide the Services under the Contract is a former Global Fund officer or employee and shall warrant that the said former Global Fund officer or employee is not subject to any work restrictions (including non-compete, gardening leave or similar provision) by virtue of such person's employment or previous employment with the Global Fund. For purposes of this section, Global Fund officers and employees are defined as current, past or retired Global Fund officers or employees, as the case may be, or individuals that have worked for the Global Fund under a contract of employment.

## 7.2. Key Personnel:

7.2.1 For any of the Key Personnel that the Supplier has not yet identified at the time a Purchase Order is issued: 1) the Supplier shall submit the resume of the Key Personnel to the Global Fund with sufficient notice before the start date of the relevant assignment, and 2) the Global Fund shall endorse the Supplier's selection of the Key Personnel before the Key Personnel starts to perform any activity under such Purchase Order.

7.2.2 At any time during the term of the Contract, at the option and in the sole discretion of the Global Fund, the resume and qualifications of any Key Personnel proposed by the Supplier may be reviewed by the Global Fund and the Key Personnel may be interviewed by the Global Fund prior to such Key Personnel performing any obligation under the Contract. Based on its review the Global Fund may reasonably refuse to endorse the Supplier's selection of any such Key Personnel.

7.2.3. The Supplier shall promptly notify the Global Fund in writing if it or its subcontractor(s) intend to remove or replace any Key Personnel and shall provide the Global Fund with resume(s) for the proposed candidates who will replace such individuals. Any replacement of Key Personnel shall be subject to the prior written approval of the Global Fund. Should the qualification and the experience of the proposed Key Personnel differ from the standards initially agreed under such Purchase Order, the Global Fund shall have the right to renegotiate the Key Personnel daily rates or price of the Services.

7.2.4. Notwithstanding the foregoing, the Global Fund retains the right to require the removal or replacement of any of the Key Personnel as an event that may impair the Global Fund's ability to achieve the stated purposes contained in the Contract and the Global Fund may, in its sole discretion, terminate such Contract or any part thereof should any Key Personnel be replaced by an individual not possessing similar qualifications and experience acceptable to the Global Fund, as such Key Personnel.

7.2.5. Any request by the Global Fund for the withdrawal or replacement of the Supplier's Key Personnel shall not be considered as a termination, in whole or in part, of the Contract, and the Global Fund shall not bear any liability in respect of such withdrawn or replaced Key Personnel.

## **8. Access to Global Fund's Premises and Equipment**

8.1. The Supplier shall ensure that all Personnel assigned by it to perform any obligation under the Contract and who may have access to any premises or other property of the Global Fund shall:

8.1.1. Undergo or comply with security screening requirements made known to the Supplier by the Global Fund including, but not limited to, a review of any criminal history; and

8.1.2. When within the Global Fund premises or on Global Fund property, display such reasonable identification as may be approved and furnished by the relevant Global Fund facilities management and security teams.

8.2. All operations of the Supplier, as applicable, including without limitation, storage of equipment, materials, supplies and parts, within the Global Fund premises or on Global Fund property shall be confined to areas authorized or approved by the Global Fund.

8.3. Equipment and items (including consumable and non-consumable items) that the Global Fund issues to the Supplier, which may include laptops, mobile phones, monitors, or as otherwise indicated in the Contract or other separate communication in writing from the Global Fund, shall remain the property of the Global Fund. The Supplier acknowledges that they are solely responsible for the return of such equipment and items and that the Global Fund may recover them from the Supplier at any time. The Supplier shall not, under any circumstances, have a lien or any other interest in such equipment and items, and the Supplier shall at all times use the equipment and items for their intended purpose in furtherance of fulfilling the Contract and possess them only as fiduciary and bailee of the Global Fund. The Supplier shall not commingle the equipment and items with its own and shall accordingly advise all subcontractors and other interested third parties of the Global Fund's ownership over such equipment and items.

8.4. The Supplier shall promptly pay the Global Fund for all loss, destruction or damage to the equipment and items provided by the Global Fund that may be directly or indirectly caused by the Supplier's Personnel, or any of its Representatives.

8.5. The Supplier shall immediately notify the Global Fund when the Supplier, its Personnel or other individual or entity that has access to a Global Fund system or is in possession of Global Fund's equipment or items is no longer performing work under the Contract and shall provide reasonable assistance to the Global Fund to ensure access is effectively revoked by the Global Fund and the equipment and items are returned.

## **9. Publicity and Use of the Name, Logo or Trademark of the Global Fund**

The Supplier shall not use or permit the use of the name or any logo or trademark of the Global Fund, or any abbreviation thereof, without the prior written consent of the Global Fund. The Supplier shall not, in any statement of an advertising or promotional nature, refer to its relationship with the Global Fund or to the Contract or any of the Services, without the prior written consent of the Global Fund.

## **10. Intellectual Property, Title and Risk of Loss**

10.1. Title to all Goods or interest in the Services furnished hereunder shall be transferred free and clear of all liens, claims, security interests and other encumbrances when title thereto passes to the Global Fund. Unless otherwise expressly provided in the Contract, title in and to the Goods or Services generated in the performance of the Contract shall pass from the Supplier or any of its Representatives to the Global Fund upon delivery of the Goods or Services and their acceptance by the Global Fund.

10.2. Except as is otherwise expressly provided in writing in the Contract, the Global Fund shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials that the Supplier or any of its Representatives has developed for the Global Fund under the Contract and that bear a direct relation to, or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Supplier acknowledges and agrees that such products, documents and other materials constitute works made for hire for the Global Fund.

10.3. To the extent that any such intellectual property rights consist of any intellectual property or other proprietary rights of the Supplier: (i) that pre-existed the performance by the Supplier of its obligations under the Contract; or (ii) that the Supplier may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the Global Fund does not and shall not claim any ownership interest thereto, and the Supplier grants to the Global Fund a non-exclusive, perpetual, royalty-free, fully paid-up

and irrevocable license to use such intellectual property or other proprietary right for the purposes of, and in accordance with, the requirements of the Contract.

- 10.4. At the request of the Global Fund, the Supplier shall take all necessary steps, execute all necessary documents and generally assist in securing the proprietary rights and transferring or licensing them to the Global Fund in compliance with the requirements of the applicable law and of the Contract. The Supplier shall, in securing such proprietary rights, act at all times as per the Global Fund's written instructions only.
- 10.5. Subject to the foregoing provisions, all drawings, photographs, mosaics, graphs, maps, plans, estimates, reports, recommendations, documents, materials and all other data or information compiled or provided to the Supplier under the Contract shall be the property of the Global Fund, shall be made available for use or inspection by the Global Fund at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered to Global Fund Personnel on completion of work under the Contract.
- 10.6. Any disclosure of intellectual property or other proprietary rights within the Contract by the Global Fund shall not create any right for the Supplier in respect to it. Only in so far as necessary for the performance of the Supplier's obligations under the Contract, a license to use that intellectual property may be provided in writing upon request.

## **11. Licenses**

Upon termination or expiry of the Contract, any licenses held by the Supplier on behalf of the Global Fund as part of the Services or Goods, or both, provided shall be transferred to the Global Fund, and the Supplier shall provide reasonable assistance to ensure such transfer.

## **12. Personal Data Processing**

Section 12 included in Annex A (*Personal Data Processing Addendum*) applies where the Supplier Processes Personal Data (as such terms are defined under Annex A) on behalf of the Global Fund.

The purposes of Processing, the nature of the Personal Data and the categories of Data Subjects whose Personal Data are subject to Processing shall be as described in the statement of work or other description of services setting forth details of the Services.

## **13. Confidentiality**

13.1. The Parties shall keep, and shall ensure that any of their Personnel keep, Confidential Information secret and confidential. Unless otherwise permitted under this Section, the Receiving Party shall not disclose Confidential Information to any person, except with the prior written consent of the Disclosing Party or, on a need-to-know basis, to a limited group of the Receiving Party's Personnel and where applicable, professional advisors and/or auditors. The Receiving Party assures that each person to whom Confidential Information is being disclosed or made accessible according to the stipulations herein is contractually or legally bound to hold such information in strict confidence and agrees not to further share the Confidential Information or use the Confidential Information for any other purpose. The confidentiality obligations under this Section do not lapse upon the expiration or termination of the Contract.

13.2. The Receiving Party may disclose Confidential Information:

13.2.1. To the Global Fund Office of the Inspector General, in connection with any inquiry, investigation, or action by the Global Fund into any potential or actual finding, sanction or procedure governing Prohibited Practices, whether occurring in the past, present or future, relating to the Contract, including without limitation disclosure pursuant to the recommendations, policies and processes of the Global Fund Office of the Inspector General or the Global Fund Sanctions Panel;

13.2.2. As required by law or as a result of an order or other binding request from any judicial, administrative, legislative, or regulatory authority or body of competent jurisdiction. In such an event the Receiving Party shall as far as reasonably possible provide the Disclosing Party with prior notice without undue delay so that the Disclosing Party may seek a protective order or other appropriate remedy or waive compliance with the provisions of the Contract for the limited purpose of the required disclosure;

13.2.3. As necessary to exercise its rights under, or to implement the terms of, the Contract, including with respect to the publication of information pursuant to Section 28 (*Publication*) of these Terms and Conditions; or

13.2.4. With regard, to the Global Fund, to the members of the Global Fund's board and standing committees.

13.3. Information will not be considered Confidential Information if:

13.3.1. The information is already lawfully possessed at the time of disclosure by the Receiving Party;

13.3.2. The information is lawfully made available to the Receiving Party by a third party that is under no obligation of confidentiality to the Disclosing Party;

13.3.3. The information is developed independently by the Receiving Party, prior to disclosure by the Disclosing Party; or

13.3.4. The information is, or becomes, publicly available or otherwise part of the public domain, other than as a result of any action or omission of the Receiving Party.

13.4. For the avoidance of doubt, the obligations of this Section apply to the Supplier, as well as the Supplier's Personnel and Representatives.

## **14. Ethical Standards**

14.1. The Supplier must adhere to the highest standards of ethical competence and integrity in the performance of the Contract having due regard to the nature and purposes of the Global Fund as an international organization, and to ensure that persons assigned to perform any part of the Contract will conduct themselves in a manner consistent therewith.

14.2. The Supplier shall comply, and shall cause its Representatives to comply, with the Global Fund's Code of Conduct for Suppliers as available on the Global Fund's website ([https://www.theglobalfund.org/media/3275/corporate\\_codeofconductforsuppliers\\_policy\\_en.pdf](https://www.theglobalfund.org/media/3275/corporate_codeofconductforsuppliers_policy_en.pdf)) and as amended from time to time.

14.3. The Supplier acknowledges and confirms that it is aware of the applicability, and shall ensure its Representatives are aware of the applicability of the Global Fund's policy with regard to sanctions, including: (i) the Global Fund's Sanctions Panel procedures, as available on the Global Fund's website ([https://www.theglobalfund.org/media/6015/corporate\\_sanctionsprocedures\\_policy\\_en.pdf](https://www.theglobalfund.org/media/6015/corporate_sanctionsprocedures_policy_en.pdf)) and (ii) the disclosure of reports issued by the Office of the Inspector General, as available on the Global Fund's website ([https://www.theglobalfund.org/media/3042/oig\\_disclosureofreportsissuedbyoig\\_policy\\_en.pdf](https://www.theglobalfund.org/media/3042/oig_disclosureofreportsissuedbyoig_policy_en.pdf)), and as both procedures may be amended from time to time.

14.4. The Supplier warrants that no officer, employee, consultant or contractor of the Global Fund has received or will be offered by the Supplier, directly or indirectly, any gift, favor or benefit, excluding benefits from the provision of Goods or Services arising from the Contract or the award thereof and during the term of the Contract.

- 14.5. The Supplier and its Representatives shall, during the term of the Contract, avoid any activities that may create real or perceived conflicts of interest with their obligations to the Global Fund under the Contract. The Global Fund Policy on Conflict of Interest applies to the Supplier (as available at [https://www.theglobalfund.org/media/6016/core\\_ethicsandconflictinterest\\_policy\\_en.pdf](https://www.theglobalfund.org/media/6016/core_ethicsandconflictinterest_policy_en.pdf), and as amended from time to time). Throughout the term of the Contract, the Supplier shall ensure that any conflicts are appropriately mitigated and disclose in detail to the Global Fund any situation of actual, potential or perceived conflict of interest, as soon as the Supplier becomes aware of such situation or conflict of interest. The Supplier agrees that the Supplier and any entity affiliated with the Supplier, as well as any subcontractors and any entity affiliated with such subcontractors, shall be disqualified from providing goods, works or services to the Global Fund whose need has subsequently arisen from the Services, if the Global Fund determines that an actual, potential or perceived conflict of interest exists.
- 14.6 The Supplier shall not engage in Prohibited Practices and shall take, and cause each of its Representatives to take, all reasonable measures to prevent all Prohibited Practices in connection with the delivery of Goods or performance of Services under this Contract and shall notify the Global Fund within a timely manner when a potential or actual Prohibited Practice occurs.
- 14.7 The Supplier must promptly disclose to the Global Fund if the Supplier has knowledge or becomes aware of any sanctions imposed by any state or international organization with regards to the Supplier, its Representatives, affiliates, owners or shareholders.

## **15. Records, Audit and Investigations**

- 15.1. The Supplier agrees to maintain, in accordance with sound and generally accepted accounting principles, all financial and accounting related records pertaining to the Contract, and sufficient to enable the Global Fund (and its authorized Representatives) to verify the performance of the Contract and the amounts charged and paid therein. The Supplier shall make such records available to the Global Fund or its authorized Representatives at reasonable times during the term of the Contract and for a period of seven (7) years after the expiration or termination thereof. Records may be sought for any legitimate purpose of use by the Global Fund, including for auditing the Contract or of investigating potential Prohibited Practices, in connection with the Contract. During this same period and as relevant, the Supplier shall also provide access at reasonable times to all premises used by the Supplier in connection with the performance of the Contract and allow the Global Fund to have reasonable access to its Personnel responsible for the performance of the Contract.



15.2 The Supplier shall refund to the Global Fund any amounts shown by an audit or investigation to have been paid by the Global Fund other than in accordance with the terms and conditions of the Contract and without prejudice to any damages, claims, or amounts to which the Global Fund may be entitled under the Contract.

## **16. Representations and Warranties**

16.1. The Supplier warrants and represents during the term of the Contract that:

- 16.1.1. Except if the Supplier is an individual, it is a legal entity validly existing under the laws of the jurisdiction in which it was formed or resides, and it has all rights, licenses, permits, waivers and other governmental approvals necessary to conduct its business and activities, all of which are valid and in good standing. The Supplier shall undertake all necessary actions to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, waivers and other governmental approvals necessary to conduct its business and activities;
- 16.1.2. The Contract has been duly executed and delivered by the Supplier and is enforceable in accordance with its terms. The Supplier has all the necessary power, authority and legal capacity to enter into and perform the Contract;
- 16.1.3. The Supplier has title and all interests to the Services or Goods and is professionally qualified to deliver such Services or Goods.
- 16.1.4. There are no claims, investigations or proceedings in progress or pending or threatened against the Supplier, its Representatives or Key Personnel, which, if determined adversely, would have a material adverse effect on the ability of the Supplier to perform any of its obligations under the Contract, or on the reputation of the Global Fund;
- 16.1.5. The Supplier shall immediately provide written notice to the Global Fund of any claim, investigation or proceeding, or any audit or investigation relating to the Supplier, its Representatives or Key Personnel, or the operations of the Supplier; and
- 16.1.6. The Supplier shall promptly provide written notice to the Global Fund if it knows or suspects that any of its warranties and representations in the Contract may not be correct or complete.

16.2. The Supplier represents and warrants that during the term of the Contract, the Supplier shall comply with detailed warranties related to the delivery of Goods in accordance with Annex B of this Contract.

16.3. The Supplier represents and warrants that it, and its Representatives, are in compliance with, and shall continue to comply with, all applicable laws, ordinances, rules, regulations including intellectual property laws, and lawful orders of competent public authorities, and with internationally recognized standards for human rights, labor, the environment, anti-money laundering and anti-corruption.

16.4. The Supplier represents and warrants that it has and shall maintain for the duration of the Contract appropriate information technology security, considering the nature of Services being provided. The Supplier acknowledges that, during the period of the Contract, the Global Fund may perform risk assessment and assurance checks of the Supplier's information security systems and processes to ensure compliance with this Section and the Supplier agrees to cooperate with the Global Fund in the performance of such assessments.

## **17. Indemnification**

17.1. The Supplier shall, on demand, defend, indemnify and hold harmless the Global Fund, its present and former directors, officers, employees and agents, as applicable, against any actual or contingent suit, action, proceeding, claim, demand, damage, cost, liability or loss incurred by the Global Fund, including reasonable attorneys' fees and expenses, that arise from: (i) the Supplier's negligence, willful misconduct, wrongful acts or omissions; (ii) the Supplier's default or breach of the terms of the Contract or its representations or warranties therein; (iii) any third-party claims (including any claims from the Supplier's Representatives) arising in connection with this Contract or (iv) a claim that the Services or Goods acquired under the Contract, or the use by or on behalf of the Global Fund of such Services or Goods or of any physical or intellectual property used or provided by the Supplier in connection with the Services or Goods, infringes any intellectual property right.

17.2. The Global Fund shall notify the Supplier about any such suit, action, proceeding, claim or demand within a reasonable period of time after having received actual notice thereof. The Supplier shall have sole control of the defense of any such suit, action, proceeding, claim or demand, and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of the Global Fund or any matter relating thereto, for which only the Global Fund itself is authorized to assert and maintain. The Supplier shall however not settle any matter covered by this indemnity 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. The Global Fund shall have the right, at its own expense, to be represented in any such suit, action, proceeding, claim or demand, by independent counsel of its own choosing.

17.3. In the event the use by the Global Fund of any of the Services or Goods or both, in whole or in part, in any Dispute, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Supplier, at its sole cost and expense, shall promptly, either:

17.3.1. Procure for the Global Fund the unrestricted right to continue using such Services or Goods provided to the Global Fund;

17.3.2. Replace or modify the Services or Goods provided to the Global Fund, or part thereof, with equivalent or better Services or Goods, or part thereof, as the case may be, that is non-infringing; or

17.3.3. Refund to the Global Fund the full price paid by the Global Fund for the right to have or use such Services or Goods, or part thereof, as the case may be including, where applicable, any costs incurred by the Global Fund to replace the Supplier of the relevant Goods or Services under this Contract.

17.4 The obligations set out within this Section (17) (*Indemnification*) shall survive the expiration or termination of the Contract.

## **18. Insurance**

18.1. The Supplier is solely responsible for all applicable taxes, benefits, worker's compensation, health and other insurances relating to its Personnel. The Supplier must hold and ensure that each of its Personnel hold a valid work permit and ensure that each of them operates in compliance with applicable laws. If the Supplier is an individual, the Supplier must hold a valid work permit and is covered by health and other compulsory insurances.

18.2. Before commencing the performance of the Contract, the Supplier shall obtain and maintain at its own sole cost and expense for the duration of the Contract, insurance coverage with loss limits considered appropriate by the Global Fund for the Contract, and which are reasonably standard in the international insurance market but only if such standards exist at the time of entry into the Contract, including any such insurance as required by the law of the country of incorporation or license and by the law of the country where the work or service is to be

performed. The Supplier shall within ten (10) calendar days after a request by the Global Fund, provide the Global Fund with certificates of insurance evidencing such insurance policies and coverage. Within ten (10) calendar days of request by the Global Fund, the Supplier shall also cause its liability insurance provider(s) to include during the term of the Contract on its policies: (i) the Global Fund as an additional named insured as its interests may appear with respect to the Contract and (ii) a waiver of all and any rights of subrogation against the Global Fund. The insurances procured by the Supplier shall be primary and non-contributory with insurances procured by any other person including the Global Fund.

18.3. To the best of its knowledge and belief, the Supplier is not aware of anything that it has done or suffered or omitted to be done which has rendered or is likely to render any of the insurance policies or policy endorsements required pursuant to this Section 18 (*Insurance*) unenforceable, suspended, void or voidable, in whole or in a material part or to entitle any insurer or reinsurer to reduce its liability thereunder.

## **19. No Partnership or Agency**

Nothing in this Contract or in connection with the Contract shall create an employment, agency, partnership or joint venture between the Supplier and the Global Fund. The Supplier's Personnel shall remain in the employ and shall be the sole responsibility of the Supplier, and shall not be deemed to be Personnel of the Global Fund. The Global Fund shall not be responsible or liable to any Personnel, supplier or customer of the Supplier for any compensation, remuneration, commission, benefit, damage, liability or claim of any nature whatsoever. Neither the Supplier nor any of its Personnel is authorized to act, or make any statement, representation or warranty on behalf of the Global Fund without the prior written consent of the Global Fund.

## **20. Successors and Assignees**

Nothing in the Contract shall permit any assignment of the Contract, or any part thereof, without the prior written consent of the Global Fund. If the Global Fund has provided its consent to the assignment, the Contract shall be binding on the successors and assignees of the Supplier, and the Contract shall be deemed to include the Supplier's successors and assignees.

## **21. Subcontracting**

No person who is not a Party to this Contract has any right to enforce any terms of the Contract. In the event that the Supplier uses the services of subcontractors or agents in connection with the performance of any of its obligations under the Contract, the Supplier shall obtain the prior written approval of the Global Fund. The approval of the Global

Fund of a subcontractor or agent shall not relieve the Supplier of any of its obligations under the Contract, and the Supplier shall be solely responsible and liable for the conduct of its subcontractors and agents. The terms of any subcontracting or agency agreement entered into by the Supplier in connection with or relating to the Contract shall be subject to and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract. Upon the request of the Global Fund, Supplier must submit to the Global Fund copies of such subcontracting or agency agreement.

## **22. Term and Termination**

22.1. Term. Unless sooner terminated, the Contract shall remain valid for the period stated in the Contract.

22.2. Termination for Convenience. The Global Fund may terminate the Contract in whole or in part at any time if the Global Fund determines that such a termination is in its best interests. The Global Fund shall effect the termination by sending a written notice of such termination to the Supplier, which notice will state that termination is for the Global Fund's convenience, the extent to which performance of the Contract is terminated and the termination date. Unless otherwise instructed by the Global Fund, the Supplier shall stop work immediately on receipt of the notice and follow the instructions and directions of the Global Fund. In the event of a termination for convenience, the Supplier shall be entitled to be paid for Services already delivered or performed by the Supplier prior to the effective date of termination.

22.3. Termination for Default. If the Supplier fails to deliver the Services or Goods required by the Contract, within the time period(s) specified or in the manner required by the Contract, or if the Services do not conform to the requirements of the Contract, or the Supplier becomes insolvent or unable to meet its payment obligations when due, or breaches any terms, or representations or warranties made under the Contract, the Global Fund will give the Supplier written notice describing the reasons for default and as determined by the Global Fund, a reasonable opportunity to cure the default, if the default can be cured. If the Supplier does not cure the default within the period specified to the satisfaction of the Global Fund, or if the Global Fund considers that the default cannot be cured, the Global Fund may terminate the Contract for default by written notice, specifying the reasons for the termination, the portion(s) of the Contract defaulted and the effective date of termination. Notwithstanding anything to the contrary, the Global Fund shall have the right, in its sole discretion, to terminate the Contract for default if the Supplier is in violation of any provision of the Section of this Contract on Ethical Standards, and the Global Fund shall have the right to do so without giving the Supplier an opportunity to cure.

## **23. Force Majeure**

No Party to the Contract shall be responsible for any delay caused by Force Majeure, provided that the Party affected by such an event takes all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of the Contract. Either Party who fails to perform its obligations under the Contract must promptly give notice to the other Party of the impediment and its effect on its ability to perform its obligations under the Contract within a reasonable time. However, the Global Fund is entitled to terminate the Contract, or any part thereof, immediately if the provision of any Services or Goods in accordance with the Contract is delayed for an aggregate period of thirty (30) calendar days, or if because of the Force Majeure event, the Supplier will be unable to perform its obligations under the Contract. Such termination shall be subject to the repayment of any reasonable costs and expenses incurred or irrevocably committed to in respect to the Contract, and based on documentation provided to the satisfaction of the Global Fund. In the event of such termination, the Supplier shall, immediately deliver to the Global Fund all Services or Goods and other materials prepared or produced as at the time of termination.

## **24. Settlement of Disputes**

24.1. If any Dispute arises out of or in connection with the Contract, the Parties agree that, before submitting such Dispute to arbitration as set out in Sub-Section 24.2 below, representatives of each Party shall, for a period of thirty (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.

24.2. Subject to Sub-Section 24.1 above, all Disputes shall be finally settled under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules in force at the time of the commencement of the arbitration. The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The case shall be administered by the International Bureau of the Permanent Court of Arbitration. There shall be one arbitrator. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English. All awards of the arbitral tribunal shall be final and binding upon the Parties.

## **25. Severability and Waiver**

If any provision in the Contract is deemed invalid or unenforceable by applicable law, it shall have no effect and shall not invalidate or render unenforceable any other provision of the Contract. Any failure by the Global Fund to enforce the Contract in a particular instance shall not be construed as a relinquishment or waiver of its rights in future

instances. No waiver of any provision of the Contract shall be effective unless it is in writing and signed by both Parties, and no such waiver shall constitute a waiver of any other provision of the Contract or of the same provision on another occasion.

## **26. Entire Agreement; Counterparts; and E-Signatures**

The Contract constitutes the entire agreement between the Parties with respect to its subject matter, and supersedes all prior and contemporaneous communications and proposals, whether electronic, oral or written, between the Parties. The Contract may be executed in one or more counterparts, and all counterparts taken together will constitute the one and the same instrument. Delivery of an executed counterpart signature page of this Agreement by email (as a PDF attachment) shall be as effective as delivery of a manually executed counterpart of this Agreement. The Parties also recognize electronic signature of this Agreement as valid and as having the same legally binding effect as signature in any other manner described herein. Notwithstanding the foregoing, the terms of the Contract shall be deemed to have been accepted by the Supplier as soon as it commences to perform under the Contract.

## **27. Amendment**

Except as expressly provided in the Contract, no amendment or modification to the Contract shall be valid unless it is in writing and duly signed by the Global Fund and the Supplier.

## **28. Publication**

Pursuant to the Global Fund policies and procurement procedures, the Global Fund publishes certain information consistent with its public status and commitment to transparency. As such, the Supplier acknowledges and agrees that the Global Fund may publish certain information relating to the procurement of contract awards, including without limitation the Supplier's name, as disclosed on its website.

## **29. Governing Law and Language**

29.1. The Contract is governed by the International Institute for the Unification of Private Law (UNIDROIT) Principles of International Commercial Contracts (2016).

29.2. The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning or interpretation of the Contract.

## **30. Status, Privileges and Immunities of the Global Fund**

- 30.1. Notwithstanding any provision in the Contract, the Supplier acknowledges that the Global Fund is an international organization with status, privileges and immunities provided under: (i) the Headquarters Agreement between the Swiss Federal Council and the Global Fund; (ii) the Agreement on Privileges and Immunities of the Global Fund to Fight AIDS, Tuberculosis and Malaria; (iii) national laws, including the International Organizations Immunities Act of the United States of America (22 United States Code 288 and 288f – 6); and (iv) international law, including international customary law, international conventions, treaties or agreements;
- 30.2. Nothing in, or related to, the Contract may be construed as a limitation upon or waiver, express or implied, of the privileges and immunities accorded to the Global Fund.

### **31. Notices**

- 31.1. All notices between the Parties in connection with the Contract shall be in writing and in English and shall be deemed as received when delivered by hand, registered mail, or e-mail at the time of transmission as evidenced by proof of satisfactory transmission, in accordance with the relevant contact details stated in the Contract.
- 31.2. The Supplier shall promptly notify the Global Fund in writing of any change in the Supplier's applicable contact or address details for notices. The Global Fund may rely conclusively on, and shall incur no liability in respect of any action taken upon, any notice, consent, request, instruction or other instrument believed in good faith to be genuine or to be signed by an authorized representative of the Supplier.

### **32. 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.

\* \* \* \* \*



**Annex A**  
**Personal Data Processing Addendum  
to Section 12**

The following definitions apply to Section 12:

**Affiliate** means, with respect to any entity, any other entity that is controlling, controlled by or under common control with the first entity. For the purposes of this definition, “control” means the power to direct the management or policies of such entity through the holding directly or indirectly of more than fifty (50) percent of the issued share capital or stock (or other ownership interest if not a corporation) of that entity ordinarily having voting rights, and “controlling” and “controlled” have corresponding meanings.

**Controller** means the natural or legal person, public authority, agency or other body which, alone or jointly with others, determines the purposes and means of the Processing of Personal Data.

**Data Subject** means the natural person to whom Personal Data relates.

**Personal Data** means any information relating to an identified or identifiable natural person.

**Personal Data Breach** means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed (including any breach that causes Personal Data to be corrupted or rendered unusable for any reason).

**Processor** means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of a Controller.

**Process** and its derivatives means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure, making available, alignment or combination, restriction, erasure or destruction.

- 12.1. **Accountability.** The Global Fund and the Supplier agree that the Global Fund is the Controller and the Supplier is the Processor of any Personal Data Processed in connection with this Contract. The Global Fund and the Supplier acknowledge that the details of the Processing activities contemplated under this Contract are set out in the statement of work or other description of services setting forth details of the Services. In the event that the Supplier is characterized as a Controller in respect of Personal Data that the Global Fund transfers to the Supplier, the Supplier acknowledges that it must comply, and must ensure that its agents or sub-contractors (including its Affiliates) shall comply, with any applicable data protection laws.

12.2. Principles of Processing. To the extent that the performance of the Supplier's obligations under this Contract involves Processing Personal Data on behalf of the Global Fund, the Supplier shall, and shall procure that its agents and sub-contractors (including its Affiliates) shall:

12.2.1. Process Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified by this Contract and in accordance with the Global Fund's documented instructions, unless the Supplier is otherwise required to Process Personal Data by law to which the Supplier is subject; in which case the Supplier shall immediately inform the Global Fund of that legal requirement before Processing (unless prohibited from doing so by the applicable law on important grounds of public interest);

12.2.2. taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risks for the rights and freedoms of individuals concerned, implement all technical and organizational measures necessary to ensure a level of security appropriate to the risk in order to ensure that Personal Data is protected against loss, destruction or damage, and unauthorized or unlawful Processing. These measures may include: (i) the pseudonymization and encryption of Personal Data; (ii) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services; (iii) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and (iv) a process for regularly testing, assessing and evaluating the effectiveness of technical and organizational measures for ensuring the security of the Processing;

12.2.3. only disclose Personal Data to its Personnel or those of its agents or sub-contractors who are subject to binding confidentiality obligations in respect of Personal Data (and whose use of that Personal Data relates to their job function), and shall ensure that those individuals only Process the Personal Data on instructions from the Global Fund (unless otherwise required to do so by applicable law);

12.2.4. take reasonable steps to ensure the reliability of the individuals who may have access to Personal Data (including by giving them appropriate training in data protection, security and confidentiality of Personal Data);

12.2.5. make available to the Global Fund all information necessary to demonstrate compliance with its obligations under this Section 12 and allow for and contribute to audits of its facilities, procedures, records and documentation which relate to the Processing of Personal Data, including inspections by the Global Fund, its auditors or agents, or any data protection regulator;

- 12.2.6. only engage another Processor (a **Sub-Processor**) with the Global Fund's prior written authorization and by entering into a legally binding written agreement that places the same data protection obligations as those set out in this Section 12 on the Sub-Processor, provided that if the Sub-Processor fails to fulfil its data protection obligations the Supplier shall remain fully liable to the Global Fund for the performance of the relevant Sub-Processor's obligations;
  - 12.2.7. assist the Global Fund in ensuring compliance with the Global Fund's obligations under its internal policies and carrying out data protection impact assessments, taking into account the nature of Processing and information available to the Supplier;
  - 12.2.8. maintain a written record of all categories of Processing activities carried out on behalf of the Global Fund and make this record available on request to the Global Fund; and
  - 12.2.9. promptly carry out any request from the Global Fund requiring the Supplier to amend, transfer, copy or delete any Personal Data in a format and on media reasonably specified by the Global Fund.
- 12.3. Notification obligations and Personal Data Breaches. The Supplier in its capacity as Processor shall notify the Global Fund, and shall procure that its agents and sub-contractors (including its Affiliates) notify the Global Fund:
- 12.3.1. promptly of any request received from a Data Subject exercising his or her rights in relation to Personal Data relating to them, or otherwise in relation to the Processing of Personal Data relating to them and, taking into account the nature of the Processing, assist the Global Fund, using appropriate technical and organizational measures, with responding to that Data Subject (including responding to any subject access requests or requests from a Data Subject for access to, or rectification, erasure or portability of, Personal Data relating to them);
  - 12.3.2. immediately on becoming aware of any actual, suspected or threatened Personal Data Breach. The Supplier accepts and acknowledges that the Global Fund shall direct, in its sole discretion, any and all steps and measures taken in response to the Personal Data Breach, including any communications with Data Subjects.
  - 12.3.3. promptly to describe the steps the Supplier will take to restore Personal Data in the event of any Personal Data Breach (which shall include the use of its back up and/or disaster recovery procedures, at no cost to the Global Fund).

- 12.3.4. immediately upon receipt of a notice from any data protection regulator or a complaint from a Data Subject, which relates directly or indirectly to the Processing of Personal Data, and the Supplier shall on the Global Fund's request cooperate with that regulator or Data Subject.
- 12.4. Insurance. The Supplier shall maintain up-to-date cyber security insurance in the amount of at least USD 1,000,000, or any other amount otherwise agreed by the Parties in the Contract, in addition to any other insurance requirements set out in this Contract.
- 12.5. Termination. On the expiry or termination of this Contract, the Supplier shall immediately cease to Process, and shall procure that its agents and sub-contractors (including its Affiliates) cease to Process, Personal Data and shall arrange for its safe return or destruction (at the Global Fund's option) at the relevant time (unless applicable law requires storage of the Personal Data).
- 12.6. *Rights in Personal Data*. Neither the Supplier nor its agents or subcontractors (including its Affiliates) shall acquire rights in or to any Personal Data and shall only be entitled to Process it in accordance with the obligations of the Supplier under this Section 12, and any other applicable terms of this Contract.

**Annex B**  
**Specific Provisions related to the purchase of Goods**

**1. Delivery and Performance**

- 1.1. The Supplier shall hand over or make available the Goods, and the Global Fund shall receive the Goods, at the place for the delivery of the Goods and within the period for delivery of the Goods specified in the Contract. The Supplier shall provide to the Global Fund such shipment documentation (including, but not limited to, bills of lading, airway bills, and commercial invoices) as are specified in the Contract, or otherwise as are customarily utilized in the trade.
- 1.2. The Supplier shall ensure that all manuals, instructions, displays and any other information relevant to the Goods shall be in the English language, unless otherwise specified in the Contract.
- 1.3. Unless otherwise stated in the Contract (including, but not limited to, in any INCOTERM or similar trade term), the entire risk of loss, damage to, or destruction of the Goods shall be borne exclusively by the Supplier until physical delivery of the Goods to the Global Fund in accordance with the terms of the Contract.
- 1.4. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by the Global Fund.

**2. Inspection, Acceptance or Rejection**

- 2.1. After receipt of the Goods, the Global Fund shall have the right to inspect, and accept or reject such Goods. If the Contract provides that the Goods may be inspected prior to delivery, the Supplier shall notify the Global Fund when the Goods are ready for pre-delivery inspection. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to the Global Fund or its designated inspection agents at no charge therefor.
- 2.2. Under no circumstances shall the Global Fund be required to accept any Goods that do not conform to the specifications or requirements of the Contract. Based on an inspection of a valid sample, the Global Fund may reject the Goods in whole or in part.
- 2.3. If the Global Fund determines that the Goods delivered by the Supplier do not conform with the specifications or requirements of the Contract, the Global Fund shall have the right to notify the Supplier, and the Supplier shall have the obligation

to comply with such notice, of such nonconformity. The Global Fund shall give the Supplier a period of time to ensure, at the Supplier's own cost, that the concerned Goods and/or Related Services conform with the pertinent specifications or requirements. The Global Fund may charge the Supplier the cost of inspecting or re-inspecting rejected Goods. Any rejected Goods will be returned to the Supplier at the Supplier's cost within a reasonable period of time.

- 2.4. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Supplier of any of its warranties or the performance of any of its obligations under the Contract.

### **3. Packaging of the Goods**

The Supplier shall provide proper and adequate packaging in accordance with the highest standards of packaging for the type and quantities and modes of transport of the Goods, and in accordance with prevailing commercial best practices, to ensure that the Goods delivered to the Global Fund will be free from any damage. The Goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract, or otherwise as customarily applicable for goods in the same trade or industry, and in accordance with any requirements imposed by applicable law and/or by the transporters and manufacturers of the Goods. Expenses incurred by the Global Fund due to the Supplier's non-compliance with these requirements and/or relevant instructions will be for the Supplier's account. The Global Fund reserves the right to reject any and all shipments deemed by the Global Fund to have been inadequately packaged. Unless otherwise specified in the Contract, the Supplier shall have no right to any return of the packing materials.

### **4. Representations and Warranties related to Goods**

- 4.1 Unless otherwise specified in the Contract and if applicable, in addition to and without limiting any other warranties, representations, remedies or rights of the Global Fund stated in or arising under the Contract, the Supplier warrants and represents that:

4.1.1. The Goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such Goods are ordinarily used and for any purpose expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

- 4.2.2. If the Supplier is not the original manufacturer of the Goods, the Supplier shall provide the Global Fund with all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
- 4.2.3. The Goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;
- 4.2.4. The Goods are free from any right of claim by any third party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets; and
- 4.2.5. The Goods are new and unused prior to first use under the Contract; and
- 4.2.6 All warranties in this Section, shall survive the Global Fund's inspection, acceptance and payment, and the Global Fund's continued use of the Goods after notifying the Supplier of their failure to conform to the Contract or breach of warranty, and will not be considered a waiver of the Global Fund's right to a remedy.