

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA**Terms and Conditions of Purchase
of
Goods
27 March 2018**

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

1. Definitions

- 1.1. **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.
- 1.2. **Contract** means the agreement between the Global Fund and the Supplier for the provision of the Goods and/or Related Services, including, as applicable: (i) the Contract Form or Purchase Order Face Sheet, and all attachments thereto, including but not limited to the schedule, terms of reference and/or description of services; (ii) the Purchase Order(s); and (iii) these Terms and Conditions.
- 1.3. **Disclosing Party** means the Party that is providing Confidential Information.
- 1.4. **Dispute** means any dispute, controversy or claim arising from, or relating to, the Contract, including the breach or termination or invalidity thereof.
- 1.5. **Force Majeure** means an event beyond the control of either Party, as the case may be, which by its very nature could not have been foreseen by the relevant Party, or, if it could have been foreseen, was unavoidable, and includes without limitation, a delay caused by strike, lockout, natural disaster, 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.
- 1.6. **Global Fund** refers to the Global Fund to Fight AIDS, Tuberculosis and Malaria, as described in Sub-Section 3.1.1., with its headquarters located at Chemin du Pommier 40, 1218 Grand-Saconnex, Geneva, Switzerland.
- 1.7. **Goods** means the supplies, equipment and/or other items to be delivered by the Supplier, pursuant to the Contract.
- 1.8. **Headquarters Agreement** refers to the Agreement between the Swiss Federal Council and the Global Fund to Fight AIDS, Tuberculosis and Malaria in view of determining the legal status of the Global Fund in Switzerland, dated 13 December 2004.
- 1.9. **Party** or **Parties** refers to either or both the Global Fund and/or the Supplier.

- 1.10. **Purchase Order** 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 Related Services, and including any attachments thereto, whether issued at the time of execution of the Contract or during its term.
- 1.11. **Receiving Party** means the Party that is receiving Confidential Information.
- 1.12. **Related Services** means the services necessary to make the Goods operational or usable, including but not limited to installation, calibration and the like.
- 1.13. **Supplier** refers to the Party (includes individual and entity, whether public, quasi-public or private) that is contracted to deliver and/or perform the Goods and/or Related Services pursuant to the Contract.

2. Order of Precedence

If there is a conflict between these Terms and Conditions and any special conditions in the Contract, then such special conditions shall govern, unless otherwise specifically indicated in these Terms and Conditions.

3. Status, Privileges and Immunities of the Global Fund

- 3.1. Notwithstanding any provision in the Contract, the Supplier acknowledges the following:
 - 3.1.1. The Global Fund is an international organization with status, privileges and immunities provided under: (i) the Headquarters Agreement; (ii) any national laws, including the International Organizations Immunities Act of the United States of America (22 United States Code 288 and 288f – 6); and (iii) international law, including international customary law, international conventions, treaties and/or agreements;
 - 3.1.2. Pursuant to Section 7 of the Headquarters Agreement, the Global Fund is exempt from the imposition of direct and indirect federal, cantonal and communal taxes, particularly the value-added tax on all purchases intended and services provided for official use in Switzerland. Moreover, by virtue of the International Organizations Immunities Act of the United States of America (22 United States Code 288 and 288f – 6), the Global Fund is not subject to sales taxes, duties and charges due under any local, State or Federal law of the United States of America arising as a result of, or in connection with, any purchase of goods or services under the Contract; and
 - 3.1.3. Except for the charges, duties and any other indirect taxes that may be duly invoiced for payment to the Global Fund, the Global Fund shall not be responsible or liable for any local, state or federal taxes arising as a result of, or in connection with the Goods and/or Related Services, including any taxes imposed in connection with any net or gross income, or upon any property of the Supplier. Any payments by the Global Fund to the Supplier shall reflect any tax exemption to which the Global Fund is entitled by reason of the immunity it enjoys.

- 3.2. 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.

4. Reference Law and Language

- 4.1. Any matter relating to the interpretation or application of the Contract, which is not covered by its terms, shall be resolved by reference to the UNIDROIT (2004) Principles of International Commercial Contracts.
- 4.2. The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning and/or interpretation of the Contract.

5. 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 Goods and/or Related Services, without the prior written consent of the Global Fund.

6. Confidentiality

- 6.1. The Parties shall keep Confidential Information secret and confidential. 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 directors, officers or employees, professional advisors or consultants, 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 and/or legally bound to hold such information in strict confidence. The confidentiality obligations under this Section do not lapse upon the expiration or termination of the Contract.
- 6.2. The Receiving Party may disclose Confidential Information:
 - 6.2.1. In connection with any enquiry or investigation by the Global Fund into any potential, and any finding, sanction or procedure of the Global Fund governing actual, misconduct, fraud or abuse, 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;
 - 6.2.2. 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 and/or waive compliance with the provisions of the Contract for the limited purpose of the required disclosure; or
 - 6.2.3. As necessary to exercise its rights under, or to implement the terms of, the Contract.

- 6.3. Information will not be considered Confidential Information if:
- 6.3.1. The information is generally available to the public or otherwise part of the public domain at the time of disclosure to the Receiving Party;
 - 6.3.2. 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;
 - 6.3.3. The information is developed independently without reference to the Confidential Information; or
 - 6.3.4. 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.
- 6.4. The obligations in this Section applies to the Supplier, as well as its officers, employees, consultants, contractors and subcontractors.

7. Procurement Integrity

- 7.1. The Supplier agrees to 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.
- 7.2. The Supplier represents and warrants that it is in compliance with, and shall continue to comply with, all applicable laws, ordinances, rules, regulations, and lawful orders of competent public authorities, and with internationally recognized standards for human rights, labor, the environment, anti-money laundering and anti-corruption.
- 7.3. The Supplier acknowledges and confirms that it is aware of and shall, and shall cause its relevant officers, employees, consultants, contractors and subcontractors to, comply with the Global Fund's Code of Conduct for Suppliers and the Global Fund's Sanctions Panel procedures, as available on the Global Fund's website (<http://www.theglobalfund.org/en/documents/governance/>) and as updated from time to time.
- 7.4. The Supplier and its subcontractors, as well as each of their officers, employees, consultants, contractors and subcontractors, shall, during the term of the Contract, strictly avoid any activities that may create real or perceived conflicts of interest with their obligations to the Global Fund under the Contract.
- 7.5. The Supplier warrants that no officer, employee, consultant, contractor or subcontractor of the Global Fund has received or will be offered by the Supplier, directly or indirectly, any gift, favor or benefit arising from the Contract or the award thereof.

8. Records and Audit

- 8.1. 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 representative) 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 representative at reasonable times during the term of the Contract and for a period of seven (7) years after the expiration or termination thereof, for the purpose of auditing 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.
- 8.2. The Global Fund shall be entitled to a refund from the Supplier for any amounts shown by an audit to have been paid by the Global Fund other than in accordance with the terms and conditions of the Contract.

9. Notices

- 9.1. All notices between the Parties in connection with the Contract shall be in writing and in English, and delivered by hand, registered mail or e-mail, in accordance with the relevant contact details stated in the Contract.
- 9.2. The Supplier shall promptly notify the Global Fund in writing of any change in the Supplier's 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.

10. Scope of the Contract

- 10.1. The Supplier shall provide the Goods and/or Related Services described in the Contract.
- 10.2. The Supplier acknowledges and agrees that there may be additions, deletions or other changes that may affect the provision of the Goods and/or Related 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 and/or Related Services, the Parties shall negotiate in good faith equitable adjustments to the amount payable to the Supplier and the delivery schedule under the Contract.

11. Delivery and Performance

- 11.1. 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. All manuals, instructions, displays and any other information relevant to the Goods shall be in the English language, unless otherwise specified in the Contract. 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. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by the Global Fund.

11.2. As applicable, the Supplier shall perform the Related Services within the period specified in the Contract.

12. Inspection, Acceptance or Rejection

12.1. After receipt of the Goods or performance of the Related Services, as the case may be, the Global Fund shall have the right to inspect, and accept or reject such Goods and/or Related Services. 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. Rejected Goods will be returned to the Supplier at the Supplier's cost. 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.

12.2. Under no circumstances shall the Global Fund be required to accept any Goods and/or Related Services 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 and/or Related Services in whole or in part. If the Global Fund determines that the Goods delivered and/or Related Services performed 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 of such nonconformity and 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 and/or Related Services. The Supplier agrees that the Global Fund's payment under the Contract shall not be deemed an acceptance of any of the Goods and/or Related Services delivered. Neither the carrying out of any inspections of the Goods and/or Related Services 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.

13. 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 done in the trade, 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.

14. Intellectual Property, Title and Risk of Loss

14.1. The Supplier represents and warrants that the Supplier has title and all interests to the Goods and Related Services, and is fully and legally qualified to deliver such Goods and Related Services. Title to all Goods 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 shall pass from the Supplier to the Global Fund upon delivery of the Goods and their acceptance by the Global Fund in accordance with the terms, conditions and requirements of the Contract.

- 14.2. 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 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.
- 14.3. 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.
- 14.4. 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.
- 14.5. 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 received by 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 authorized officers or employees on completion of work under the Contract.

15. Warranties

- 15.1. General. The Supplier warrants and represents during the term of the Contract that:
 - 15.1.1. 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 such rights, licenses, permits, waivers and other governmental approvals are valid and in good order. The Supplier shall undertake all necessary action 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;
 - 15.1.2. 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;

- 15.1.3. The Supplier's activities are, and at all times, operated in compliance with all applicable laws, including intellectual property law;
 - 15.1.4. There are no claims, investigations or proceedings in progress or pending or threatened against the Supplier, 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, and/or on the reputation of the Global Fund;
 - 15.1.5. 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, or the operations of the Supplier; and
 - 15.1.6. 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.
- 15.2. **Goods.** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of the Global Fund stated in or arising under the Contract, the Supplier warrants and represents that:
- 15.2.1. 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;
 - 15.2.2. 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;
 - 15.2.3. 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;
 - 15.2.4. 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;
 - 15.2.5. The Goods are new and unused; and
 - 15.2.6. All warranties shall survive the Global Fund's inspection, acceptance and payment, and the Global Fund's continued use of the Goods and/or Related Services after notifying the Supplier of their failure to conform to the Contract or breach of warranty, will not be considered a waiver of the Global Fund's right to a remedy.

16. Indemnification

- 16.1. 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 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; or (iii) a claim that the Goods and/or Related Services acquired under the Contract, or the use by or on behalf of the Global Fund of such Goods and/or Related Services or of any physical or intellectual property used or provided by the Supplier in connection with the Goods and/or Related Services, infringes any intellectual property right. The obligations set out herein shall survive the expiration or termination of the Contract.

- 16.2. The Global Fund shall advise 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 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.
- 16.3. In the event the use by the Global Fund of any of the Goods and/or Related Services, in whole or in part, in any suit, action, proceeding, claim or demand, 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:
 - 16.3.1. Procure for the Global Fund the unrestricted right to continue using such Goods and/or Related Services provided to the Global Fund;
 - 16.3.2. Replace or modify the Goods and/or Related Services provided to the Global Fund, or part thereof, with equivalent or better Goods and/or Related Services, or part thereof, as the case may be, that is non-infringing; or
 - 16.3.3. Refund to the Global Fund the full price paid by the Global Fund for the right to have or use such Goods and/or Related Services, or part thereof, as the case may be.

17. Insurance

- 17.1. The Supplier is solely responsible for all applicable taxes, benefits, worker's compensation, health and other insurances relating to its officers, employees, contractors and agents. The Supplier must hold and ensure that each of its officers, employees, contractors and agents holds a valid work permit and ensure that each of them operates in compliance with applicable laws.
- 17.2. Before commencing the performance of the Contract, the Supplier shall obtain and maintain at its own expense for the duration of the Contract, appropriate insurance coverage with appropriate loss limits for 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. Upon

request, the Supplier shall provide the Global Fund with certificates of insurance for this insurance coverage. Upon request by the Global Fund, the Supplier shall also cause its liability insurance provider(s) to include on its policies the Global Fund as an additional named insured as its interests may appear with respect to the Contract.

18. Payment

- 18.1. The Global Fund shall pay for all Goods and/or Related Services delivered and/or performed, and any other amounts payable to the Supplier in accordance with the Contract.
- 18.2. The Supplier acknowledges and agrees that the Global Fund may refuse to make payments under the Contract to a bank account that is not held in the name of the Supplier.
- 18.3. All payments shall be made in the currency indicated in the Contract. The Global Fund shall accept no liability whatsoever for 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.
- 18.4. Subject to the provisions of the Contract on inspection, acceptance and rejection, the Global Fund must receive and accept the relevant Goods and/or Related Services before the Global Fund becomes obliged to make any corresponding payment to the Supplier.
- 18.5. 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 a *Supplier/Service Provider Creation Form* (which can be obtained from the Global Fund).
- 18.6. Unless indicated otherwise in the Contract, the Supplier shall, no later than thirty (30) calendar days following completed delivery and/or performance of the Goods and/or Related Services, 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 verify the amounts in the invoice.
- 18.7. 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 Global Fund and 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 8.1.

18.8. The Global Fund will 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 that:

18.8.1. Are incorrectly addressed;

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

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

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

May be rejected and returned to the Supplier for correction and resubmission to the Global Fund for payment.

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

18.9.1. Any expense or liability incurred by the Supplier will not be paid 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

18.9.2. The Supplier will be solely responsible for paying such expense or meeting such liability.

19. Independent Contractor

The Supplier shall, at all times, be an independent contractor. Nothing in this Contract or in connection with the Contract shall create an employment, agency, partnership, joint venture or any fiduciary relationship between the Supplier and the Global Fund. The officers, employees, agents and contractors of the Supplier shall remain in the employ and shall be the sole responsibility of the Supplier, and shall not be the officers, employees, agents or contractors of the Global Fund. The Global Fund shall not be responsible or liable to any officer, employee, agent, contractor, 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 officers, employees, agents or contractors 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

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; provided, however, that nothing in the Contract shall permit any assignment of the Contract, or any part thereof, without the prior written consent of the Global Fund.

21. Subcontracting

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. The Global Fund may require the Supplier to submit copies of such subcontracting or agency agreement.

22. Term and Termination

22.1. Term. Unless sooner terminated pursuant to this Section, 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 Goods and/or Related 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 Goods and/or Related Services required by the Contract, within the time period(s) specified or in the manner required by the Contract, or if the Goods and/or Related 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 representations or warranties made under the Contract, the Global Fund will give the Supplier written notice describing the reasons for default and a reasonable opportunity to cure it. If the Supplier does not cure the default within the period specified, 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 Procurement Integrity, 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 will 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. However, the Global Fund is entitled to terminate the Contract, or any part thereof, immediately if the provision of any Goods and/or Related Services in accordance with the Contract is delayed for an aggregate period of thirty (30) calendar days. Such termination shall be subject to payment of a reasonable part of the Contract amount and any other reasonable charges. In the event of such termination, the Supplier shall, in accordance with the Global Fund's ownership and other rights under the Contract, immediately delivery to the Global Fund all Goods and/or Related Services 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 by arbitration under the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules in force from time to time. There shall be one arbitrator. The appointment authority for such arbitrator shall be the International Chamber of Commerce International Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English.

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, 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

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. 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

- 27.1. 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.
- 27.2. An amendment or modification may include, but not be limited to, changes in the kind of Goods and/or Related Services, payment terms or completion schedule.

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