

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA**Terms and Conditions of Purchase
of
Services
21 August 2020**

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

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 Service Provider for the provision of the 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. **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.
- 1.8. **Party** or **Parties** refers to either or both the Global Fund and/or the Service Provider.
- 1.9. **Purchase Order** means the purchase order(s) issued by the Global Fund to the Service Provider setting out the Global Fund’s requirements for the Services, and including any attachments thereto, whether issued at the time of execution of the Contract or during its term.

- 1.10. **Receiving Party** means the Party that is receiving Confidential Information.
- 1.11. **Related Goods** means any goods that are necessarily required and/or resulting from providing the Services.
- 1.12. **Service Provider** refers to the Party (includes individual and entity, whether public, quasi-public or private, and in certain cases may also be referred to as “Consultant”) that is contracted to perform the Services and/or deliver the Related Goods using its own means, methods or manner of accomplishing the desired result pursuant to the Contract.
- 1.13. **Services** means the work or service to be performed by the Service Provider, 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 Service Provider 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) the Agreement on Privileges and Immunities of the Global Fund to Fight AIDS, Tuberculosis and Malaria; (iii) any 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 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 Services, including any taxes imposed in connection with any net or gross income, or upon any property of the Service Provider. Any payments by the Global Fund to the Service Provider 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 Service Provider 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 Service Provider 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.

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, personnel, 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 Service Provider, as well as its personnel, officers, employees, consultants, contractors and subcontractors.

7. Procurement Integrity

- 7.1. The Service Provider 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 Service Provider 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 Service Provider acknowledges and confirms that it is aware of and shall, and shall cause its relevant personnel, 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 Service Provider and its subcontractors, as well as each of their personnel officers, employees, consultants and contractors, 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 Service Provider warrants that no officer, employee, consultant or contractor of the Global Fund has received or will be offered by the Service Provider, directly or indirectly, any gift, favor or benefit arising from the Contract or the award thereof.
- 7.6. The Service Provider agrees that the Service Provider and any entity affiliated with the Service Provider, as well as any subcontractors and any entity affiliated with such subcontractors:
 - 7.6.1. Shall be disqualified from subsequently providing goods, works or services (other than consulting services) related to the Services; and
 - 7.6.2. For the duration of the Contract and for a period of three (3) years after its termination, shall not provide any consulting services related to the Services unless the Service Provider obtains the prior consent of the Global Fund, which consent shall not be unduly withheld unless, in the opinion of the Global Fund, there is a conflict of interest.

8. Records and Audit

- 8.1. The Service Provider 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 Service Provider 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 Service Provider shall also provide access at reasonable times to all premises used by the Service Provider in connection with the performance of the Contract.

- 8.2. The Global Fund shall be entitled to a refund from the Service Provider 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 Service Provider shall promptly notify the Global Fund in writing of any change in the Service Provider'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 Service Provider.

10. Scope of the Contract

- 10.1. The Service Provider shall perform the Services described in the Contract. The Service Provider shall also include Related Goods or items that are not specifically mentioned but are necessarily required to complete performance of the Contract, as if such items were expressly mentioned therein. The Related Goods and additional requirements for complete delivery of the Services are provided in the Contract.
- 10.2. The Service Provider acknowledges and agrees that there may be additions, deletions or other changes that may affect the performance of the Services during the term of the Contract. Upon receiving the Global Fund's written notice of any such changes, the Service Provider shall promptly and in good faith accommodate those changes. For any material change to the specifications of the Services, the Parties shall negotiate in good faith equitable adjustments to the amount payable to the Service Provider and the delivery schedule under the Contract.

11. Obligations of the Service Provider

- 11.1. The Service Provider shall perform the Services according to the Global Fund's requirements specifically described in the Contract during the term of the Contract and in consideration for the payment of the Contract price. The Service Provider shall further deliver such Related Goods that necessarily result from performing the Services, if there are any.
- 11.2. The timely provision of the Services, including commencing the performance of the Services within the time agreed or on a specified date, shall be of the essence of the Contract.
- 11.3. The Service Provider shall perform its obligations according to the performance standards provided in the Contract.
- 11.4. The Service Provider shall perform the Services and carry out its obligations with all due diligence and in accordance with generally accepted professional practices and the prevailing standards of the profession. In respect of any matter relating to the Contract or to the Services, the Service Provider shall at all times support and safeguard the Global Fund's legitimate interests in any dealings with third parties.

- 11.5. As applicable, the Service Provider shall deliver the Related Goods within the period specified in the Contract.

12. Evaluation, Acceptance or Rejection

- 12.1. To confirm the continued adequacy of the Service and/or compliance with the required standards, the Service Provider shall allow the Global Fund to evaluate, test and/or inspect the Service and/or Related Goods regularly or randomly during normal business hours on reasonable notice. The Service Provider and/or its subcontractors shall furnish all reasonable facilities and assistance, including access to drawing and production data, as applicable, and other relevant documents at no cost to the Global Fund. Details of the evaluation, tests and/or inspection that the Global Fund requires, if there are any, are to be specified in the Contract.
- 12.2. The Global Fund may reject the Services and/or Related Goods, or any part thereof, if it is evaluated to be inadequate or not conforming to the specifications provided in the Contract. The Global Fund may ask the Service Provider to either rectify or modify/improve the Services and/or Related Goods, or any part thereof, as necessary and at no cost to the Global Fund, to meet the required standard.
- 12.3. The Service Provider's consent to the evaluation and/or testing of the Services, or inspection of the Related Goods, or any part thereof, shall not release the Service Provider from its warranties and other obligations under the Contract.

13. Service Provider's Undertakings

- 13.1. The Service Provider shall be responsible for the professional and technical competence of the personnel it assigns to perform the Services, and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs, the Global Fund's policies, rules and regulations, and conform to a high standard of moral and ethical conduct.
- 13.2. Such Service Provider personnel shall be qualified and, if required to work with officers, employees or agents of the Global Fund, shall be able to do so effectively.
- 13.3. At the option and in the sole discretion of the Global Fund:
 - 13.3.1. The qualifications of personnel proposed by the Service Provider may be reviewed by the Global Fund prior to such personnel performing any obligation under the Contract;
 - 13.3.2. Any personnel proposed by the Service Provider to perform obligations under the Contract may be interviewed by qualified officers or employees of the Global Fund prior to such personnel performing any obligation under the Contract; and/or
 - 13.3.3. In cases in which, pursuant to any of the prior options in this Sub-Section, the Global Fund has reviewed the qualifications of such Service Provider's personnel, the Global Fund may reasonably refuse to accept any such personnel.
- 13.4. Except as the Global Fund may otherwise agree, no changes shall be made to the Service Provider's personnel. If, for any reason beyond the control of the Service Provider, it becomes necessary to replace any of the Service Provider's personnel, the Service Provider shall provide as a replacement a person of equivalent or better qualifications and experience, with no cost to the Global Fund.

- 13.5. If the Global Fund: (i) finds that any of the 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 personnel, then the Service Provider shall, at the Global Fund's written request specifying the grounds therefore, provide as a replacement a person with qualifications and experience acceptable to the Global Fund, with no cost to the Global Fund. Within one (1) working day after learning that any of the Service Provider's personnel who has access to any Global Fund premises has been charged by law enforcement authorities with an offense other than a minor traffic offense, the Service Provider shall provide written notice to inform the Global Fund about the particulars of the charges then known and shall continue to inform the Global Fund concerning all substantial developments regarding the disposition of such charges.
- 13.6. Requirements specified in the Contract regarding the number or qualifications of the Service Provider's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:
 - 13.6.1. The Global Fund may, at any time, request, in writing, the withdrawal or replacement of any of the Service Provider's personnel, and such request shall not be unreasonably refused by the Service Provider;
 - 13.6.2. Any of the Service Provider's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of the Global Fund, which shall not be unreasonably withheld;
 - 13.6.3. The withdrawal or replacement of the Service Provider's personnel shall be carried out by the Service Provider as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract;
 - 13.6.4. All expenses related to the withdrawal or replacement of the Service Provider's personnel shall, in all cases, be borne exclusively by the Service Provider;
 - 13.6.5. Any request by the Global Fund for the withdrawal or replacement of the Service Provider's personnel shall not be considered to be 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 personnel; and
 - 13.6.6. If a request for the withdrawal or replacement of the Service Provider's personnel is not based upon a default by the Service Provider, a failure on the part of the Service Provider to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with Global Fund officers, employees or agents, then the Service Provider shall not be liable by reason of any such request for the withdrawal or replacement of the Service Provider's personnel for any delay in the performance by the Service Provider of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.
- 13.7. Nothing in the immediately preceding Sub-Section shall be construed to create any obligation on the part of the Global Fund with respect to the Service Provider's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Service Provider.
- 13.8. Unless otherwise specified in the Contract, the Service Provider shall supervise and control the Service Provider's personnel at all times, but the Global Fund may

recommend the re-assignment of the Service Provider's personnel when the Global Fund determines that their qualifications and training are inconsistent with the qualifications agreed with the Service Provider.

- 13.9. The Service Provider shall be responsible for requiring 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:
 - 13.9.1. Undergo or comply with security screening requirements made known to the Service Provider by the Global Fund including, but not limited to, a review of any criminal history; and
 - 13.9.2. When within the Global Fund premises or on Global Fund property, display such identification as may be approved and furnished by the Global Fund, and that upon the withdrawal or replacement of any such personnel, or upon the termination or completion of the Contract, as the case may be, such personnel shall immediately return any such identification to the Global Fund for cancellation.
- 13.10. All operations of the Service Provider, 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. The Service Provider's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in areas within the Global Fund premises or on Global Fund property without appropriate authorization from the Global Fund.
- 13.11. Equipment and non-consumable items that the Global Fund issues to the Service Provider for free, as indicated in the Contract, shall remain the property of the Global Fund, and the Global Fund may recover them from the Service Provider at any time. The Service Provider shall not, under any circumstances, have a lien or any other interest on such equipment and non-consumable items, and the Service Provider shall at all times possess them only as fiduciary agent and bailee of the Global Fund. The Service Provider shall not commingle the equipment and non-consumable 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 non-consumable items.
- 13.12. The Service Provider shall compensate the Global Fund for the loss of, or damage to, equipment and non-consumable items that the Global Fund has provided to the Service Provider when the Global Fund determines that the loss or damage resulted from the willful act or gross negligence of the Service Provider's personnel. Upon expiration or termination of the Contract, the Service Provider shall immediately return, without need of demand, the equipment and non-consumable items that the Global Fund had provided to it.
- 13.13. The Service Provider shall promptly pay the Global Fund for all loss, destruction or damage to property of the Global Fund caused by the Service Provider's personnel or by any of its subcontractors, or anyone else directly or indirectly employed by the Service Provider or any of its subcontractors in the performance of the Contract.
- 13.14. The Service Provider shall immediately notify the Global fund of any personnel (including a subcontractor's personnel) intended to be assigned to provide the Services under the contract who is a former Global Fund officer or employee, and shall warrant that said former Global Fund officer or employee is not subject to any work restrictions by virtue of such former employment with the Global Fund. For purposes of this clause, Global Fund officers and employees are defined as current 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.

14. Intellectual Property, Title and Risk of Loss

- 14.1. The Service Provider represents and warrants that the Service Provider has title and all interests to the Services and Related Goods and is fully and legally qualified to deliver such Services and Related Goods. Title to all Related 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 Related Goods shall pass from the Service Provider to the Global Fund upon delivery of the Related 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 Service Provider 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 Service Provider 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 Service Provider: (i) that pre-existed the performance by the Service Provider of its obligations under the Contract; or (ii) that the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider 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 Service Provider warrants and represents during the term of the Contract that:
 - 15.1.1. Except if the Service Provider 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 Service Provider 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 Service Provider and is enforceable in accordance with its terms. The Service Provider has all the necessary power, authority and legal capacity to enter into and perform the Contract;
 - 15.1.3. The Service Provider'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 Service Provider, which, if determined adversely, would have a material adverse effect on the ability of the Service Provider to perform any of its obligations under the Contract, and/or on the reputation of the Global Fund;
 - 15.1.5. The Service Provider shall immediately provide written notice to the Global Fund of any claim, investigation or proceeding, or any audit or investigation relating to the Service Provider, or the operations of the Service Provider; and
 - 15.1.6. The Service Provider 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. Related Goods. Unless otherwise specified in the Contract and if applicable, in addition to and without limiting any other warranties, remedies or rights of the Global Fund stated in or arising under the Contract, the Service Provider warrants and represents that:
- 15.2.1. The Related Goods, including all packaging and packing thereof, conform to the specifications of the contract, are fit for the purposes for which such Related 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 Service Provider is not the original manufacturer of the Related Goods, the Service Provider 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 Related 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 Related 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 Related 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 Related Goods after notifying the Service Provider 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 Service Provider 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 Service Provider's negligence, willful misconduct, wrongful acts or omissions; (ii) the Service Provider's default or breach of the terms of the Contract or its representations or warranties therein; or (iii) a claim that the Services and/or Related Goods acquired under the Contract, or the use by or on behalf of the Global Fund of such Services and/or Related Goods or of any physical or intellectual property used or provided by the Service Provider in connection with the Services and/or Related Goods, 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 Service Provider about any such suit, action, proceeding, claim or demand within a reasonable period of time after having received actual notice thereof. The Service Provider 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 Services and/or Related Goods, 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 Service Provider, at its sole cost and expense, shall promptly, either:
 - 16.3.1. Procure for the Global Fund the unrestricted right to continue using such Services and/or Related Goods provided to the Global Fund;
 - 16.3.2. Replace or modify the Services and/or Related Goods provided to the Global Fund, or part thereof, with equivalent or better Services and/or Related Goods, 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 Services and/or Related Goods, or part thereof, as the case may be.

17. Insurance

- 17.1. The Service Provider is solely responsible for all applicable taxes, benefits, worker's compensation, health and other insurances relating to its personnel, officers, employees, contractors and agents. The Service Provider must hold and ensure that each of its personnel, 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 Service Provider 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

Service Provider shall provide the Global Fund with certificates of insurance for this insurance coverage. Upon request by the Global Fund, the Service Provider 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 Services and/or Related Goods performed and/or delivered, and any other amounts payable to the Service Provider in accordance with the Contract.
- 18.2. The Service Provider 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 Service Provider.
- 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 Service Provider.
- 18.4. Subject to the provisions of the Contract on evaluation, acceptance and rejection, the Global Fund must receive and accept the relevant Services and/or Related Goods before the Global Fund becomes obliged to make any corresponding payment to the Service Provider.
- 18.5. In the event of any change or amendment to the bank account indicated in writing by the Service Provider to which payments are to be made by the Global Fund, the Service Provider 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 Service Provider shall, no later than thirty (30) calendar days following completed delivery and/or performance of the Services and/or Related 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 verify the amounts in the invoice.
- 18.7. If the Service Provider has been granted access to the iSupplier, the Service Provider shall enter and upload to the portal all invoices in PDF format.
If the Service Provider is using E-invoicing, invoices are exchanged electronically between Global Fund and Service Provider in an XML format.
If access to the iSupplier or E-invoicing portals has not been granted, the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider will be solely responsible for paying such expense or meeting such liability.

19. Independent Contractor

The Service Provider 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 Service Provider and the Global Fund. The personnel, officers, employees, agents and contractors of the Service Provider shall remain in the employ and shall be the sole responsibility of the Service Provider, and shall not be the personnel, officers, employees, agents or contractors of the Global Fund. The Global Fund shall not be responsible or liable to any personnel, officer, employee, agent, contractor, supplier or customer of the Service Provider for any compensation, remuneration, commission, benefit, damage, liability or claim of any nature whatsoever. Neither the Service Provider nor any of its personnel, 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 Service Provider, and the Contract shall be deemed to include the Service Provider'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 Service Provider uses the services of subcontractors or agents in connection with the performance of any of its obligations under the Contract, the Service Provider 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 Service Provider of any of its obligations under the Contract, and the Service Provider 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 Service Provider 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 Service Provider 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 Service Provider, 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 Service Provider 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 Service Provider shall be entitled to be paid for Services already delivered or performed by the Service Provider prior to the effective date of termination.
- 22.3 Termination for Default. If the Service Provider fails to deliver the Services and/or Related 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 Service Provider 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 Service Provider written notice describing the reasons for default and a reasonable opportunity to cure it. If the Service Provider 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 Service Provider 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 Service Provider 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 Services and/or Related Goods 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 Service Provider shall, in accordance with the Global Fund's ownership and other rights under the Contract, immediately deliver to the Global Fund all Services and/or Related 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 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 Service Provider 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 Service Provider.

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

28. Personal Data Processing

This Section 28 applies where the Service Provider Processes Personal Data (as such terms are defined herein) 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. The following definitions apply to this Section 28:

Affiliate means, with respect to any entity, any other entity that is Controlling, Controlled by or under common Control with the first entity.

Control and its derivatives shall mean, with regard to any entity, the holding directly or indirectly of more than fifty (50) per cent. of the issued share capital or stock (or other ownership interest if not a corporation) of that entity ordinarily having voting rights.

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, unauthorised 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, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure, making available, alignment or combination, restriction, erasure or destruction.

- 28.1. **Accountability.** The Global Fund and the Service Provider agree that the Global Fund is the Controller and the Service Provider is the Processor of any Personal Data Processed in connection with this Contract. The Global Fund and the Service Provider 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 Service Provider is characterized as a Controller in respect of Personal Data that the Global Fund transfers to the Service Provider, the Service Provider acknowledges that it must comply, and must procure that its agents or sub-contractors (including its Affiliates) shall comply, with any applicable data protection laws.
- 28.2. **Principles of Processing.** To the extent that the performance of the Service Provider's obligations under this Contract (including any supporting or ancillary activities) involves Processing Personal Data on behalf of the Global Fund, the Service Provider shall, and shall procure that its agents and sub-contractors shall:
 - 28.2.1. 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 Service Provider is otherwise required to Process Personal Data by law to which the Service Provider is subject; in which case the Service Provider 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);
 - 28.2.2. 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 organisational 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 unauthorised or unlawful Processing. These measures may include: (i) the pseudonymisation 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 organisational measures for ensuring the security of the Processing;
 - 28.2.3. only disclose Personal Data to its personnel, officers, employees, consultants 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);

- 28.2.4. 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);
 - 28.2.5. make available to the Global Fund all information necessary to demonstrate compliance with its obligations under this Section 28 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;
 - 28.2.6. only engage another Processor (a **Sub-Processor**) with the Global Fund's prior written authorisation and by entering into a legally binding written agreement that places the same data protection obligations as those set out in this Section 28 on the Sub-Processor, provided that if the Sub-Processor fails to fulfil its data protection obligations the Service Provider shall remain fully liable to the Global Fund for the performance of the relevant Sub-Processor's obligations;
 - 28.2.7. assist the Global Fund in ensuring compliance with the Global Fund's obligations under its internal policies, taking into account the nature of Processing and information available to the Service Provider;
 - 28.2.8. 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
 - 28.2.9. promptly carry out any request from the Global Fund requiring the Service Provider to amend, transfer, copy or delete any Personal Data in a format and on media reasonably specified by the Global Fund.
- 28.3. Notification obligations and Personal Data Breaches. The Service Provider in its capacity as Processor shall notify the Global Fund, and shall procure that its agents and sub-contractors notify the Global Fund:
- 28.3.1. 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);
 - 28.3.2. immediately on becoming aware of any actual, suspected or threatened Personal Data Breach. The Service Provider 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.
 - 28.3.3. promptly to describe the steps the Service Provider 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).
 - 28.3.4. 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 Service Provider shall on the Global Fund's request cooperate with that regulator or Data Subject.

- 28.4. Insurance. The Service Provider 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.
- 28.5. Termination. On the expiry or termination of this Contract, the Service Provider shall immediately cease to Process, and shall procure that its agents and sub-contractors 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).
- 28.6. *Rights in Personal Data*. Neither the Service Provider nor its agents or sub-contractors shall acquire rights in or to any Personal Data and shall only be entitled to Process it in accordance with the obligations of the Service Provider under this Section 28, and any other applicable terms of this Contract.

29. 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 Service Provider acknowledges and agrees that the Global Fund publishes certain information relating to procurement contract awards, including without limitation the Service Provider's name, as disclosed on its website.

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