



GRANT REGULATIONS (2014)

**Applicable to Grants Made by
The Global Fund to Fight AIDS, Tuberculosis and Malaria**

**THE GLOBAL FUND
TO FIGHT AIDS, TUBERCULOSIS AND MALARIA
GRANT REGULATIONS (2014)**

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**ARTICLE 1
PURPOSE; APPLICATION TO GRANT AGREEMENTS**

- 1.1 **Purpose.** The purpose of these Grant Regulations is to set forth certain terms and conditions generally applicable to grants made by the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”).
- 1.2 **Application.** For any grant made by the Global Fund in respect of a Program (as such term is defined in Section 2.2 below), these Grant Regulations apply to the extent specified in the relevant Grant Agreement (as such term is defined in Section 2.2 below) for such grant.
- 1.3 **Inconsistency with Grant Agreement.** If any provision of a Grant Agreement is inconsistent with a provision of these Grant Regulations, the provision of the Grant Agreement shall govern.

**ARTICLE 2
DEFINITIONS; INTERPRETATION**

- 2.1 **Short Title.** These Grant Regulations may be cited as the “Global Fund Grant Regulations (2014)”.
- 2.2 **Definitions.** Except where the context otherwise specifies, the following terms wherever used in these Grant Regulations or in a Grant Agreement to which these Grant Regulations have been made applicable shall have the respective meanings as defined below:

Auditing Guidelines means the Global Fund’s “Guidelines for Annual Audits of Global Fund Grant Program Financial Statements” (2014, as may be amended from time to time), available at the Global Fund’s Internet site;

CCM means the Country Coordinating Mechanism in a Host Country (as such term is defined below), which is a country-level public-private partnership and whose role is, among others, to (1) coordinate the development of Concept Note(s) (as such term is defined below) to the Global Fund for relevant Program(s) based on priority needs at the national level and (2) oversee the implementation of Program Activities (as such term is defined below);

Code of Conduct for Recipients means the Global Fund’s “Code of Conduct for Recipients of Global Fund Resources” (2012, as may be amended from time to time), available at the Global Fund’s Internet site;

Code of Conduct for Suppliers	means the Global Fund's "Code of Conduct for Suppliers" (2009, as may be amended from time to time), available at the Global Fund's Internet site;
Concept Note	means a written proposal prepared for a Program or, as the case may be, Programs in accordance with the requirements of the Global Fund;
Disbursement	in respect of a specific tranche of the Grant Funds (as such term is defined below) for a Program, means an act by the Global Fund to effect a transfer of the whole or a part of such tranche amount to the designated bank account of the Principal Recipient (as such term is defined below) or a third party, all in accordance with the relevant Grant Agreement;
Framework Agreement	means a Framework Agreement entered into by the Global Fund with a Grantee (as such term is defined below), in which these Grant Regulations are incorporated by reference and under which the Grantee and the Global Fund anticipate entering into one or more Grant Confirmations (as such term is defined below), for the purposes of implementing Programs;
Government Entity	in respect of a Host Country, means a branch, ministry, division, department, unit or an agency, instrumentality or other entity of the government of such Host Country at any level, or any entity or organization, in which the government of such Host Country at any level is a majority shareholder or over whose operations the government of such Host Country at any level has control or substantial influence;
Grant Agreement	in respect of a Program, means collectively the Framework Agreement, the Grant Confirmation, and any and all amendments to the Framework Agreement and/or the Grant Confirmation;
Grantee	means an entity with independent legal personality, who signs a Framework Agreement with the Global Fund;
Grant Confirmation	means a written confirmation that contains a detailed implementation plan and budget for a Program and is prepared, issued and duly executed by the respective duly authorized representatives of the Global Fund and the Grantee (acting directly or through its relevant Principal Recipient) pursuant to the terms and conditions of the Framework Agreement;
Grant Funds	means the funds specified in a Grant Confirmation, which the Global Fund, subject to the terms and conditions set forth in the Grant Agreement, agrees to make available to the Grantee (or to its Principal Recipient designated in the Grant Confirmation) in the form of a grant for the implementation of the relevant Program;
Health Product	shall have the same meaning as defined in the Health Products Guide (as such term is defined below);

Health Products Guide	means the Global Fund's "Guide to Global Fund's Policies on Procurement and Supply Management of Health Products" (2012, as may be amended from time to time), available at the Global Fund's Internet site;
Host Country	means a country or an economic territory in which a specific Program is implemented;
Implementation Period	in respect of a Program, means the period in which the relevant Program Activities are scheduled to be implemented and completed;
LFA	In respect of a Program, means a Local Fund Agent that is engaged by the Global Fund to provide oversight, verification and/or reporting services to the Global Fund concerning Program implementation in the relevant Host Country;
Principal Recipient	in respect of a Program, means an entity nominated by the relevant CCM, RCM (as such term is defined below) or RO (as such term is defined below) to implement the Program in accordance with the relevant Grant Agreement; for each Grant Confirmation executed and delivered pursuant to the Framework Agreement, the Principal Recipient specified therein is, belongs to, forms a part of, is a subsidiary of, or is otherwise affiliated with, the Grantee;
Program	means a program designed to utilize the Grant Funds to fight against the diseases of HIV/AIDS, tuberculosis and/or malaria, including strengthening of related health systems, in a Host Country or Host Countries;
Program Activities	in respect of a Program, means activities directly supporting or relating to the implementation of the Program or otherwise financed by the Program with the relevant Grant Funds;
Program Assets	in respect of a Program, means collectively all goods or other tangible or intangible property acquired wholly or partly using Grant Funds, including, but not limited to, any asset not fully paid for, under such Program;
Program Books and Records	in respect of a Program, means any and all programmatic or accounting books, records, documents and other evidence relating to the Grant Agreement, which can adequately show, without limitation, all costs incurred and revenues earned for the Program and the overall progress towards completion of the Program;
RCM	means a Regional Coordinating Mechanism, which is a multi-country regional-level public-private partnership and whose role is, among others, to (1) coordinate the development of Concept Note(s) to the Global Fund for relevant Program(s) based on priority needs at the regional level and (2) oversee the implementation of Program Activities;
RO	means an Regional Organization, which is an entity with independent legal personality that is not a United Nations

agency or a multilateral or bilateral organization, which can demonstrate broad regional stakeholder consultation and involvement, including, but not limited to, the endorsement by each CCM of the countries included in the relevant Program, and whose role is, among others, to (1) coordinate the development of Concept Note(s) to the Global Fund for relevant Program(s) based on priority needs at the regional level and (2) oversee the implementation of Program Activities;

- Sub-recipient** in respect of a Program, means a recipient who receives Grant Funds directly or indirectly from the Principal Recipient and undertakes to implement certain Program Activities;
- Suppliers** means collectively, without limitation, all bidders, suppliers, agents, intermediaries, consultants and contractors, who are not the Principal Recipient(s) or Sub-recipients but provide goods and/or services to a Program; and
- Trust Fund** means the “Trust Fund for the Global Fund to Fight AIDS, Tuberculosis and Malaria” established by the Global Fund with the World Bank.

- 2.3 **Acronyms.** Unless otherwise defined herein, the acronyms used in any Grant Agreement shall have their respective meanings as described in the “List of Commonly Used Global Fund Terminology” (as may be amended from time to time), available at the Global Fund’s Internet site.
- 2.4 **Interpretation.** Except where the context otherwise specifies, (1) references in these Grant Regulations to Articles or Sections are to Articles or Sections of these Grant Regulations; (2) the headings of the Articles and Sections and the Table of Contents are inserted for convenience of reference only and shall not affect in any way the meaning or interpretation of these Grant Regulations; (3) singular includes plural form and vice versa; and (4) a reference to any gender includes any other gender.

ARTICLE 3 GRANT FUNDS

- 3.1 **Use of Grant Funds.** For each Program, the Grantee shall ensure, and shall cause the Principal Recipient and each of its Sub-recipients to ensure, that:
- (1) All Grant Funds disbursed according to the relevant Grant Agreement are prudently managed, and are used solely for relevant Program Activities and consistent with the terms and conditions set forth in the relevant Grant Agreement; and
 - (2) All goods, services and activities financed with Grant Funds, including those goods and services procured and activities implemented by Sub-recipients, are used solely for Program purposes.
- 3.2 **Funding Commitment.** For each Program, the total amount that the Global Fund agrees to make available under the relevant Grant Confirmation shall be committed by the Global Fund in tranches on an annual basis. The amount of each such annual tranche shall be determined by the Global Fund at its sole discretion; provided, however, that (1) the first annual tranche shall be specified in, and deemed committed

by the Global Fund upon the signing of, such Grant Confirmation and (2) the amount of each subsequent annual tranche, once determined, shall be communicated by the Global Fund in due course through a written notice to the Grantee or the Principal Recipient acting on behalf of the Grantee.

3.3 Disbursement.

- (1) For each tranche of the Grant Funds committed by the Global Fund for a Program in accordance with Section 3.2, the Global Fund shall disburse relevant Grant Funds through one or more cash payments taking into consideration the cash flow needs and performance of the Program; provided, however, that notwithstanding any funding commitment that the Global Fund has made pursuant to Section 3.2 or any anticipated disbursement schedule that may be included in a Grant Confirmation, the following conditions shall apply:
 - (a) any Disbursement by the Global Fund under a Grant Confirmation shall be subject to the determination by the Global Fund, at its sole discretion, of the availability of relevant funding to the Global Fund from its donors;
 - (b) the timing and amount of each Disbursement shall be determined by the Global Fund at its sole discretion taking into consideration cash flow needs and Program performance; and
 - (c) no Disbursement described in a Grant Confirmation shall be made by the Global Fund unless all of the requirements specified hereunder and in the relevant Grant Confirmation have been met or are otherwise waived by the Global Fund in writing.
- (2) For each Program, except otherwise notified by the Global Fund in writing to the Grantee or the Principal Recipient acting on behalf of the Grantee, the Global Fund shall not effect or otherwise authorize any Disbursement after the end of the Implementation Period specified in the relevant Grant Confirmation.
- (3) For each Program, the Global Fund at its sole discretion may de-commit the whole or a part of the relevant Grant Funds (to the extent previously committed by the Global Fund in accordance with Section 3.2 but not disbursed to the Principal Recipient) upon the expiry of the Implementation Period for which such Grant Funds are made available, or as otherwise deemed appropriate by the Global Fund during the Implementation Period.

3.4 Management of Grant Funds.

- (1) **Bank Account** – For each Program, the Grantee shall ensure, and shall cause the Principal Recipient and each of its Sub-recipients to ensure, that:
 - (a) the relevant Grant Funds are deposited in a bank, of which the establishment and operations are fully compliant with all applicable local and international banking standards and regulations, including, but not limited to, capital adequacy requirements;
 - (b) the relevant Grant Funds in the possession of, or held for or on behalf of, the Principal Recipient or any Sub-recipient remain, to the extent practicable, in a bank account which bears interest at a reasonable commercial rate available in the relevant Host Country until they are expended for the Program;
 - (c) at all times, the relevant Grant Funds are held in a form that may be withdrawn in full at any time upon demand; and
 - (d) the Grant Funds are not co-mingled with other funds unless agreed to in writing by the Global Fund.
- (2) **Interest** – For each Program, the Grantee shall ensure, and shall cause the Principal Recipient and each of its Sub-recipients to ensure, that any interest accrued on the Grant Funds shall be accounted for and reported to the Global Fund through progress reports specified in Section 6.2. Any interest so accrued

may be used for Program purposes upon prior written approval of the Global Fund.

- (3) **Revenues** – For each Program, the Grantee shall ensure, and shall cause the relevant Principal Recipient and each of its Sub-recipients to ensure, that any revenues earned by the Principal Recipient or Sub-recipients from any Program Activities (including, but not limited to, revenues from the so-called “social marketing” activities using Grant Funds, refunds or rebates from Suppliers, and social security reimbursements in relation to the Principal Recipient’s or any Sub-recipient’s employees whose salary are supported by Grant Funds) shall be accounted for and reported to the Global Fund through either progress reports specified in Section 6.2 or separate reports in the form and substance approved by the Global Fund. Any such revenues may be used for Program purposes upon prior written approval of the Global Fund.

3.5 **Exemption from Taxation.**

- (1) **General Principle** – For each Program, the Grant Funds are made available by the Global Fund for the purposes of implementing respective Program Activities, and the Grant Agreement and the purchase and/or import of any goods or services using the Grant Funds shall be exempt from relevant taxation applicable in the Host Country, including, but not limited to, (a) customs duties, import duties, taxes or fiscal charges of equal effect levied or otherwise imposed on the Health Products imported into the Host Country under the Grant Agreement or any related Sub-recipient or Supplier contract, and (b) the value-added tax levied or otherwise imposed on the purchases of goods and services using Grant Funds.
- (2) **Obligations** –
- (a) Subject to any detailed implementation arrangements that the Global Fund may otherwise agree with the Host Country, the relevant Host Country is required to provide tax exemption on Grant Funds according to the principle described in sub-paragraph (1) of this Section above. For the avoidance of doubt, the obligation of the Host Country in this regard also applies to the Programs implemented partially or wholly by any Principal Recipient or Sub-recipient that is not a Government Entity.
- (b) If the Grantee concerned is not a Host Country, the Grantee (acting directly or through the Principal Recipient for the Program) shall use its best effort to facilitate and cause that any Grant Agreement under this Framework Agreement and the purchase and/or import of any goods or services using the Grant Funds are exempt from taxation according to the principle described in sub-paragraph (1) of this Section above.
- (c) For each Program, the Principal Recipient acting on behalf of the Grantee shall regularly report to the Global Fund, in such form and substance as may be required by the Global Fund, the status of tax exemption under the Grant Agreement.
- (3) **Refund of Taxes.**
- (a) For any Program implemented in a Host Country, irrespective of whether or not the Principal Recipient or Sub-recipient concerned is a Government Entity:
- (i) should there be taxes levied and paid out of the Grant Funds by any Principal Recipient or Sub-recipient, the Host Country shall refund the amount of such taxes to the Global Fund in a form and manner acceptable to the Global Fund; and
- (ii) despite the request of the Global Fund, should the Host Country fail to refund in full such taxes levied or paid, the Global Fund shall have the right to: (x) withhold further Disbursements for the Programs implemented in such Host Country until such tax amount is fully

refunded in a form and manner acceptable to the Global Fund, and/or (y) deduct twice the amount of the taxes paid from further Disbursement(s) for any Program implemented in, or from future funding allocated to, such Host Country.

- (b) For any Program in relation to which the Grantee concerned is an entity other than the Host Country,
 - (i) notwithstanding the existence of an exemption by the Host Country from taxation for the Program, should there be taxes levied and paid out of the Grant Funds by any Principal Recipient or Sub-recipient of such Grantee, it is the sole responsibility of the Grantee to seek a timely refund from the relevant tax authorities of the Host Country and to return the amount of such taxes to the Global Fund in a form and manner acceptable to the Global Fund; and
 - (ii) despite the request of the Global Fund, should the Grantee fail to refund in full such taxes levied or paid, the Global Fund shall have the right to terminate the Grant Agreement and such termination shall not affect the obligation of such Grantee to refund the relevant tax amount to the Global Fund.

3.6 **Anti-Money Laundering and Countering Terrorist-Financing.**

- (1) **General Principle** – For each Program, the Grantee shall use its reasonable efforts to ensure, and shall cause the Principal Recipient and each of its Sub-recipients to ensure, that Grant Funds are not used by the Principal Recipient or any of its Sub-recipients to support or promote violence, to aid terrorists or terrorist-related activity, to conduct money-laundering activities or to fund organizations or individuals known to support terrorism or that are involved in money-laundering activities.
- (2) **Requirements** – For each Program, the Grantee acknowledges and agrees, and shall cause the Principal Recipient and each of its Sub-recipients to acknowledge and agree, that, consistent with the Global Fund's commitment to prevent money-laundering activities and counter terrorist-financing:
 - (a) any transaction to effect the transfer, disbursement, payment, or exchange of Grant Funds (including wire transfers and currency exchanges) shall be carried out through the Principal Recipient's or, as the case may be, the relevant Sub-recipient's bank account into which Grant Funds are disbursed, unless otherwise authorized in writing by the Global Fund prior to such transaction;
 - (b) all transactions involving Grant Funds that are effected through wire transfer or currency exchange shall be duly recorded in accordance with relevant auditing requirements;
 - (c) all currency exchanges involving Grant Funds shall be carried out through established and regulated financial institutions. For the avoidance of doubt, currency exchange operations which are not carried out through established and regulated financial institutions shall not be regarded as being undertaken for the Program purposes; and
 - (d) any transfer, disbursement, payment, or exchange of Grant Funds, by any means, (i) to third parties not directly related to the implementation of the Program and the related Grant Agreement, or (ii) for any activities that are not Program Activities, is strictly prohibited.
- (3) **Remedies and Responsibilities** – For each Program, the Grantee acknowledges and agrees, and shall cause the Principal Recipient and each of its Sub-recipients to acknowledge and agree, that the Global Fund may exercise its right to terminate or apply restrictions to the relevant Grant Agreement upon the occurrence of any transaction conducted by the Principal Recipient or any of its Sub-recipients involving Grant Funds that contravenes the provisions of this

Article, and that the Grantee shall bear sole and ultimate responsibility, financial and otherwise, for any losses resulting from any such transaction referred to above and shall reimburse the Global Fund for the amount of any losses or gains resulting therefrom.

ARTICLE 4 ENTITIES INVOLVED IN PROGRAM IMPLEMENTATION

For each Program, the entities involved in the implementation of Program Activities include the following:

4.1 CCM; RCM; RO.

- (1) The Grantee acknowledges, and shall cause the Principal Recipient to acknowledge, that for each Program, the CCM in the relevant Host Country or, if the Program is a regional intervention, the relevant RCM or RO shall coordinate the submission of relevant Concept Note(s) to the Global Fund and oversee the implementation of Program Activities in such Host Country or region.
- (2) In implementing each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient:
 - (a) cooperates with the Global Fund and the CCM or, as the case may be, the relevant RCM or RO;
 - (b) is available to meet regularly with the CCM or, as the case may be, the relevant RCM or RO to discuss plans, share information and communicate on matters that relate to the Program;
 - (c) provides to the CCM or, as the case may be, the relevant RCM or RO a copy of reports and material information relating to the Program for information purposes; and
 - (d) acknowledges and understands that the Global Fund may, at its sole discretion, share information about the Program with the CCM or, as the case may be, the relevant RCM or RO and/or other relevant Program stakeholders.

- 4.2 Principal Recipient.** For each Program, the Principal Recipient nominated by the CCM in the relevant Host Country or, as the case may be, by the relevant RCM or RO in the relevant region shall act in the name and on behalf of the Grantee in implementing the Program by exercising the rights and discharging the obligations of the Grantee in accordance with the relevant Grant Agreement; provided, however, that (1) such Principal Recipient shall be specified in the relevant Grant Confirmation, and (2) the Grantee shall remain jointly and severally liable under the relevant Grant Agreement irrespective of its appointment of such Principal Recipient.

- 4.3 Sub-recipients.** For each Program, the Principal Recipient acting on behalf of the Grantee may provide Grant Funds to one or more Sub-recipients to carry out Program Activities; provided, however, that the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient:
- (1) assesses the capacity of each Sub-recipient to implement relevant Program Activities, including, but not limited to, each such Sub-recipient's capacity and internal control mechanism to adequately manage Grant Funds; makes such assessments available to the Global Fund upon request; and selects each Sub-recipient accordingly in a transparent and well-documented manner;
 - (2) enters into a written agreement with each Sub-recipient creating obligations of the Sub-recipient to the Principal Recipient that are generally equivalent to those of the Principal Recipient under the relevant Grant Agreement, including, but not be limited to, those provided for under Sections 3.1, 3.6, 5.1, 5.2 and 6.6, and

makes a copy of each such Sub-recipient agreement available to the Global Fund upon request;

- (3) maintains and complies with a system to monitor the programmatic and financial performance of Sub-recipients and assure regular reporting from them in accordance with the requirements of the relevant Grant Agreement; and
- (4) if any act or omission of any of its Sub-recipients is considered by the Global Fund a violation of the relevant Grant Agreement, is fully responsible for all such acts and omission as if they were the acts and omissions of the Principal Recipient, including, but not limited to, programmatic performance and accountability for the use of Grant Funds.

4.4 **LFA.**

- (1) **Appointment of LFA** – For each Program, the Global Fund shall have the right to retain an LFA to perform certain functions on behalf of the Global Fund, including, but not limited to:
 - (a) assessment of the capacity of the Principal Recipient and Sub-recipients to implement relevant Program Activities and manage Grant Funds; and
 - (b) verification of the Principal Recipient's progress towards the objectives of the Program, use of Grant Funds and compliance with the terms and conditions of the relevant Grant Agreement.
- (2) **Cooperation** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients and Suppliers cooperate fully with the LFA to permit the LFA to carry out its functions. To this end, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient, among other things:
 - (a) submits all reports, requests for Disbursement, and other communications that are required under the relevant Grant Agreement to the Global Fund through or with copies to the LFA as the Global Fund may require;
 - (b) submits copies of all audit reports to the LFA;
 - (c) facilitates communication between the auditor referenced in Section 7.3 and the LFA, including, but not limited to, inclusion of the LFA in the audit entry and exit meetings;
 - (d) permits the LFA to perform *ad hoc* site visits during business hours upon the LFA's reasonable prior written notice;
 - (e) permits the LFA to review Program Books and Records during business hours upon the LFA's reasonable prior written notice;
 - (f) permits the LFA to interview its personnel and the personnel of Sub-recipients during business hours upon the LFA's reasonable prior written notice;
 - (g) cooperates with the LFA to identify additional training and capacity building that the Principal Recipient and Sub-recipients may need to implement the Program; and
 - (h) cooperates with the LFA in other ways that the Global Fund may require.

- 4.5 **Additional Principal Recipients.** The Grantee acknowledges that the Global Fund may from time to time award grants to other entities to implement other Programs in the same Host Country or region. The Grantee shall cooperate, and shall take all appropriate and necessary actions to ensure that its Principal Recipient(s) cooperates, with such other entities to realize the benefits of all Programs financed by the Global Fund in such Host Country or region.

ARTICLE 5 PROCUREMENT AND SUPPLY MANAGEMENT

5.1 **Contracts for Goods and Services.**

- (1) **Procurement Practices** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient keeps the Global Fund continuously informed about the policies and practices that the Principal Recipient uses to contract for goods and services under the relevant Grant Agreement. At a minimum, the policies and practices governing all procurement under the relevant Program shall conform to the requirements (a) through (h) listed below and, where Health Products are being procured, those listed in Section 5.2 below. The Grantee shall ensure, and shall cause the Principal Recipient to ensure, that such policies and practices are followed at all times.
 - (a) Contracts shall be awarded on a transparent and, subject only to established exemptions included in written procurement policies and practices provided to the Global Fund, on a competitive basis;
 - (b) All bid solicitations must be clearly notified to all prospective bidders, which shall be given a sufficient amount of time to respond to such solicitation;
 - (c) Solicitations for goods and services shall provide all information necessary for a prospective bidder to prepare a bid and, as such, shall be based upon a clear and accurate description of the proposed terms and conditions of the contract and the goods or services to be acquired;
 - (d) The conditions of participating in a bid shall be limited to those that are essential to ensure the participant's capability to fulfil the contract in question and compliance with the relevant procurement law of the Host Country;
 - (e) Contracts shall be awarded only to contractors that possess the ability to successfully perform the contracts;
 - (f) No more than a reasonable price (as determined, for example, by a comparison of price quotations and market prices) shall be paid to obtain goods and services;
 - (g) The Principal Recipient and its representatives and agents shall not engage in any practice that is in violation of the Code of Conduct for Recipients or the Code of Conduct for Suppliers in relation to such procurement; and
 - (h) The Principal Recipient shall maintain records documenting in detail the nature and extent of solicitations of prospective suppliers of goods and services to be procured with Grant Funds, the basis for awarding relevant contracts and orders, and the receipt and use of goods and services so procured.
- (2) **Supply Chain** – The Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient uses its best efforts to ensure optimal reliability, efficiency and security with regard to the supply chain for all products procured with Grant Funds in accordance with the relevant procurement and supply management arrangements approved by the Global Fund.
- (3) **Compliance of Sub-recipients** – In the event that any Sub-recipient undertakes procurement of goods and services for the relevant Program, the Grantee (acting directly or through the Principal Recipient) shall take all appropriate and necessary actions to ensure that such Sub-recipient complies with the requirements of this Article.

5.2 **Pharmaceutical and Other Health Products.**

- (1) For each Program, the Grantee shall cause the Principal Recipient and each of its Sub-recipients to ensure that all Health Products financed with Grant Funds

are procured through contracts awarded in compliance with this Article and the Health Products Guide. All the provisions of the Health Products Guide are hereby incorporated herein by reference in their entirety as if they were fully set forth herein.

- (2) For each Program, the Grantee acknowledges and agrees, and shall cause the Principal Recipient to acknowledge and agree, that without prejudice to any other remedy available to the Global Fund under the relevant Grant Agreement or at law, if the Global Fund at its sole discretion determines that the Principal Recipient or any of its Sub-recipients has not complied with the relevant Grant Agreement, the Health Products Guide, the procurement and supply management arrangements (including, but not limited to, the list of health products and their quantities and costs) approved by the Global Fund, or any document incorporated by reference in the Health Products Guide, the Global Fund may, at its sole discretion, require or undertake any one or more of the following actions:
 - (a) require the Grantee or the Principal Recipient acting on behalf of the Grantee to refund immediately to the Global Fund, in accordance with Section 11.1, all or part of the amounts disbursed or used in connection with a contract that has been awarded in a manner that is not consistent with any provision of the relevant Grant Agreement, the provisions of the Health Products Guide, the procurement and supply management arrangements (including, but not limited to, the list of health products and their quantities and costs) approved by the Global Fund, or the provisions of any document incorporated by reference in the Health Products Guide;
 - (b) require the Principal Recipient and each of its Sub-recipients to procure the needed Health Products from a procurement agent or other supplier acceptable to the Global Fund, and for such period as considered appropriate by the Global Fund; and
 - (c) arrange and effect direct disbursement of relevant Grant Funds to a procurement agent or other supplier acceptable to the Global Fund.

ARTICLE 6 IMPLEMENTATION

6.1 General.

- (1) For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Program is implemented in accordance with the details set forth in the relevant Grant Confirmation.
- (2) **Respect for Human Rights –**
 - (a) The Grantee acknowledges that all Programs financed by the Global Fund are expected to:
 - (i) grant non-discriminatory access to services for all, including people in detention;
 - (ii) employ only scientifically sound and approved medicines or medical practices;
 - (iii) not employ methods that constitute torture or that are cruel, inhuman or degrading;
 - (iv) respect and protect informed consent, confidentiality and the right to privacy concerning medical testing, treatment or health services rendered; and
 - (v) avoid medical detention and involuntary isolation, which, consistent with the relevant guidance published by the World Health Organization, are to be used only as a last resort.

The Grantee shall ensure, and shall require each Principal Recipient to ensure, that the standards listed above are duly reflected in the Principal Recipient's agreement with, or communicated in writing to, each of its Sub-recipients and Suppliers.

- (b) In implementing each Program, the Grantee shall take all necessary actions to ensure that each Principal Recipient, in a timely manner, discloses to the Global Fund any actual or potential non-compliance of the standards listed in sub-paragraph (2)(a) of this Section. If so requested by the Global Fund, the Grantee and/or relevant Principal Recipient shall cooperate with the Global Fund and any of its agents or representatives to ascertain the facts of any non-compliance so disclosed.
- (c) In the event that the Global Fund, based on information received or otherwise available, determines in its sole discretion that a Program has substantially failed to comply with the standards listed in sub-paragraph (2)(a) of this Section, it may require the Grantee and/or the relevant Principal Recipient to establish a work plan to be approved by the Global Fund to address such non-compliance. The Global Fund may, in its sole discretion, additionally decide to restrict the use of Grant Funds to finance non-compliant Program Activities.

6.2 Progress Reports.

- (1) **Periodic and *ad hoc* Reports** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that:
 - (a) the Principal Recipient, no later than 45 days after the end of each reporting period indicated in the relevant Grant Confirmation, reports on the progress towards meeting the Program objectives and targets as set forth in the Grant Confirmation for the reporting period in question. The Principal Recipient shall also report on in-country cash balance;
 - (b) the Principal Recipient submits periodic reports in the form required by, and containing the substance satisfactory to, the Global Fund. For the reporting period in question, the Principal Recipient shall explain in the report any variance between planned and actual achievements and between planned and actual expenditures; and
 - (c) the Principal Recipient provides to the Global Fund such other information and *ad hoc* reports at such times as the Global Fund may request from time to time in writing. The Principal Recipient shall also provide to the CCM or, as the case may be, the relevant RCM or RO a copy of all reports that the Principal Recipient submits to the Global Fund under this Article.
- (2) **Use of Reports** – For each Program, the Grantee acknowledges and agrees, and shall cause the Principal Recipient to acknowledge and agree, that:
 - (a) the Global Fund may release to the general public, in whole or in part, the reports, documents and other information that have been submitted by the Principal Recipient to the Global Fund or the LFA under the relevant Grant Agreement; and
 - (b) the Global Fund may, at its sole discretion, use, reproduce, modify and/or adapt information and other data contained in such reports for any reason whatsoever.

6.3 Monitoring and Evaluation.

- (1) **General** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient monitors and evaluates the progress of the Program toward its objectives, including the activities implemented by Sub-Recipients, in accordance with the monitoring and evaluation plan agreed by the Global Fund. The Grantee shall take all

appropriate and necessary actions to ensure that the Principal Recipient receives quality data regarding such progress and reports accurately on the Program results.

- (2) **Evaluation by the Global Fund** – For each Program, the Global Fund may, at its sole discretion, conduct or commission evaluations of the Program, or of specified Program Activities, implementing structures or other Program issues. The schedule and relative terms of reference for conducting any such evaluation shall be at the Global Fund’s discretion. The Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients facilitate any such evaluation. Exercise by the Global Fund of this right does not relieve in any way the Principal Recipient of its obligations under subparagraph (1) of this Section to monitor and evaluate the Program in accordance with the relevant Grant Agreement.

6.4 Insurance; Liability for Loss, Theft or Damage.

- (1) **Insurance** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient maintains, where available at a reasonable cost, all risk property insurance on Program Assets and comprehensive general liability insurance with financially sound and reputable insurance companies. The insurance coverage shall be consistent with that held by similar entities engaged in comparable activities. To the extent that the title to relevant Program Assets is held by any Sub-recipient, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient requires such Sub-recipient to maintain an insurance of the type and coverage similar to the above.
- (2) **Liability for Loss, Theft or Damage** –
 - (a) The Grantee shall be liable for the loss or theft of, or damage to, any and all Program Assets (including those in the possession of Sub-recipients), and, immediately upon any such loss, theft or damage, shall replace such items with similar assets of the same quantity and quality at its own expense.
 - (b) In addition, the Grantee shall be liable for the loss or theft of any Grant Funds held in cash in the possession of the Principal Recipient or any of its agents or Sub-recipients.

6.5 Use of Global Fund’s Logos or Trademarks. The Grantee shall not, and shall take all appropriate and necessary actions to ensure that the Principal Recipient and all Sub-recipients do not, use the name, logo or any trademarks of the Global Fund unless they have been duly licensed directly or indirectly by the Global Fund for such use.

6.6 Anti-corruption.

- (1) **Code of Conduct for Recipients** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient complies with the Code of Conduct for Recipients, of which all the provisions are hereby incorporated herein by reference in their entirety as if they were fully set forth herein. The Grantee shall also take all appropriate and necessary actions to ensure that the Code of Conduct for Recipients is communicated to all Sub-recipients, including through incorporation by reference of the Code of Conduct for Recipients in each Sub-recipient agreement that the Principal Recipient enters into.
- (2) **Code of Conduct for Suppliers** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Code of Conduct for Suppliers, of which all the provisions are hereby incorporated herein by reference in their entirety as if they were fully set forth herein, is communicated to each and all Suppliers. The Grantee acknowledges and agrees, and shall cause the

Principal Recipient to acknowledge and agree, that in the event of non-compliance by a Supplier with the Code of Conduct for Suppliers, to be determined by the Global Fund at its sole discretion, the Global Fund shall have the right to (a) restrict the use of relevant Grant Funds so as not to fund the contract between the Principal Recipient (or, as the case may be, the Sub-recipient) and the Supplier in question or (b) seek a refund from the Grantee in the event that the payment has already been made to the Supplier in question.

- (3) **Enforcement of Standards of Conduct** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients maintain and enforce standards of conduct to govern the performance of persons affiliated with the Principal Recipient or any of its Sub-recipients (including, but not limited to, directors, officers, employees or agents) engaged in the award and administration of grants, contracts, or other benefits using Grant Funds to ensure that such persons do not engage in any practice that is in violation of the Code of Conduct for Recipients or the Code of Conduct for Suppliers.

6.7 Program Assets.

- (1) **Title** – During the Implementation Period for a Program, title to relevant Program Assets shall be held by the Principal Recipient or a Sub-recipient or other entity approved by the Grantee or the Principal Recipient acting on behalf of the Grantee, unless the Global Fund directs, at any time at its sole discretion, that title be transferred to the Global Fund or another entity nominated by the Global Fund.
- (2) **Fixed Assets Register** – For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients maintain appropriate records of all fixed assets procured with Grant Funds.

- 6.8 Management Letters.** To assist the Grantee and the Principal Recipient in the implementation of Programs, the Global Fund may issue, from time to time, management letters to provide additional information and guidance about matters stated in the relevant Grant Agreement or otherwise related to the Program.

**ARTICLE 7
BOOKS AND RECORDS; AUDITS**

- 7.1 Books and Records of the Program.** For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients respectively maintain Program Books and Records in accordance with the internationally recognized accounting standards in the Host Country, and such Program Books and Records shall, among other things, properly register the name of the beneficiary and the purpose for each payment and allow for full reconciliation of expenditures with sufficient supporting documentation. All Program Books and Records must be kept for at least seven years after the date of the last disbursement under the Grant Agreement or for such longer period as may be required by the Global Fund.
- 7.2 Principal Recipient and Sub-recipient Audits.** For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients have their respective annual financial audits of Program revenues and expenditures conducted by one or more independent auditors in accordance with the requirements of the Auditing Guidelines, of which all the

provisions are hereby incorporated herein by reference in their entirety as if they were fully set forth herein.

- 7.3 **Independent Auditor.** For each Program, the independent auditor(s) referred to in Section 7.2 shall be selected within three months of the effective date of the relevant Grant Confirmation. The selection and the related terms of reference of such independent auditor(s) shall be approved by the Global Fund.
- 7.4 **Audit Reports.** For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient provides the Global Fund with all audit reports required under the relevant Grant Agreement in accordance with the requirements of the Auditing Guidelines.
- 7.5 **Audit by the Global Fund.** For each Program, the Global Fund reserves the right, on its own or through an agent (utilizing Grant Funds or other resources available for this purpose), to perform the audits required under the relevant Grant Agreement and/or, to conduct a financial review, forensic audit or evaluation, or to take any other actions that it deems necessary to ensure the accountability of the Principal Recipient and Sub-recipients for Grant Funds and to monitor compliance by the Grantee and the Principal Recipient with the terms of the relevant Grant Agreement. The Grantee shall cooperate, and shall take all appropriate and necessary actions to ensure that the Principal Recipient, all Sub-recipients and Suppliers cooperate, with the Global Fund and its agents in the conduct of such evaluation, review, audit, inspection, assurance validation, counter-fraud activities, investigations, or other action.
- 7.6 **Right of Access.** For each Program, the Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient, all Sub-recipients, and all relevant third parties permit authorized representatives of the Global Fund, including the Office of the Inspector General, agents of the Global Fund, and any other third party appointed by the Global Fund, unrestricted access at all times to: (1) Program Books and Records and any other documentation related to the Program, including, but not limited to, e-mail correspondence through access to mail servers, backup and archival media and provision of account information, passwords and keys; (2) the premises of the Principal Recipient and any of its Sub-recipients where Program Books and Records are kept or Program activities are or have been carried out; (3) other sites where Program-related documentation is kept or Program Activities are or have been carried out; (4) all personnel of the Principal Recipient and all Sub-recipients; and (5) all computers and storage media which are, or have been, used in the course of processing or storage of (a) programmatic data for the Program or (b) the Program Books and Records, including provision of account information, passwords and keys. For each Program, the Grantee shall also take all appropriate and necessary actions to ensure that each Sub-recipient agreement entered into by the Principal Recipient includes the right of unrestricted access contained in this Section. For the avoidance of doubt, the denial of the right of unrestricted access contained in this Section, including, but not limited to, the denial of the Office of the Inspector General's right of unrestricted access, shall constitute a breach of the relevant Grant Agreement. For each Program, the Grantee shall further take all appropriate and necessary actions to ensure that any agreement entered into by the Principal Recipient with a third party does not restrict, through confidentiality undertakings or otherwise, the Global Fund from exercising in full the rights set forth herein, and that the Grantee or the Principal Recipient notifies the Global Fund as soon as it becomes aware of any such restriction.
- 7.7 **Notification.** For each Program, the Grantee or the Principal Recipient acting on behalf of the Grantee shall notify the Global Fund promptly in writing of any audit,

investigation, probe, claim or proceeding pertaining to the operations of the Principal Recipient or any of its Sub-recipients or Suppliers.

ARTICLE 8 REPRESENTATIONS OF THE GRANTEE

Except as otherwise specified, the Grantee makes the following representations to the Global Fund on the effective date of the Framework Agreement, and each such representation shall be deemed to be repeated by the Grantee on the effective date of each Grant Confirmation executed and delivered pursuant to the Framework Agreement:

- 8.1 **Legal Capacity.** The Grantee is either a sovereign state or an entity with independent legal personality validly existing under the laws of the jurisdiction in which it was formed;
- 8.2 **Necessary Power.** The Grantee, and the Principal Recipient when acting on behalf of the Grantee, have all the necessary power and/or have been duly authorised by all necessary consents, actions, approvals and authorisations to execute and deliver each Grant Agreement and any other document relating thereto and to perform all the obligations of the Grantee under each Grant Agreement and any other document relation thereto. The execution, delivery and performance by the Grantee of each Grant Agreement do not violate or conflict with any applicable law, any provision of its constitutional documents, any order or judgment of any court or any competent authority, or any contractual restriction binding on or affecting it;
- 8.3 **Obligations Binding.** The Grantee has consulted its legal counsel and confirms that (1) the Grantee's obligations under each Grant Agreement constitute its legal, valid and binding obligations, enforceable against the Grantee in accordance with its terms; and (2) nothing under the laws of the Host Country prevents the Grantee from duly discharging its obligations under each Grant Agreement according to its terms, particularly, but not limited to, those specified in Sections 7.5 and 7.6;
- 8.4 **Compliance with Laws.** All the respective activities of the Grantee, and of each Principal Recipient as of the effective date of the relevant Grant Confirmation, are operated in compliance with Host Country law and other applicable law, including, but not limited to, intellectual property law. In addition, the Grantee and each of the Principal Recipients are fully aware that there exist laws prohibiting the provision of resources and support to individuals and organizations associated with terrorism and that the European Union, the U.S. Government and the United Nations Security Council have published lists identifying individuals and organizations considered to be associated with terrorism;
- 8.5 **No Claims.** For each Program, there are no claims, investigations or proceedings in progress or pending or threatened against the Grantee or the Principal Recipient which, if determined adversely, would have a material adverse effect on the capacity of the Grantee or the Principal Recipient to implement such Program;
- 8.6 **Additionality.** (Applicable only in the case of the Grantee being a Host Country) For each Program, the Grant Funds received are in addition to the resources that the Host Country receives from external and domestic sources to carry out the activities contemplated in the Grant Confirmation; and

- 8.7 **No Double-funding.** For each Program, the targets set for such Program are made possible by the additional funding provided by the Global Fund under the relevant Grant Agreement. For each Program, none of the Grantee, the Principal Recipient or any of its Sub-recipients receives funding from any other source that duplicates the Grant Funds to be provided under the relevant Grant Confirmation.

For each Program, any material misrepresentation by the Grantee of the matters listed above is a breach, and shall constitute grounds for termination, of the relevant Grant Agreement.

ARTICLE 9 COVENANTS OF THE GRANTEE

In relation to each Program, for the Implementation Period specified in the related Grant Confirmation, the Grantee covenants and agrees to the Global Fund the following:

- 9.1 **Authority.** Each and every person executing and delivering documents related to the Grant Agreement (including, but not limited to, any amendments to the Grant Agreement) shall, at the time of such execution and delivery, have been duly authorized to represent or otherwise act on behalf of the Grantee or, as the case may be, the Principal Recipient to execute and deliver such documents;
- 9.2 **Notice of Material Events.** The Grantee or the Principal Recipient acting on behalf of the Grantee shall immediately provide written notice to the Global Fund of any claims, investigations or proceedings which, if determined adversely, could reasonably be expected to result in a material adverse effect on the ability of the Grantee, the Principal Recipient or any of its Sub-recipients to implement the Program or perform any of the other obligations under the Grant Agreement;
- 9.3 **Conduct of Business.** The Grantee shall take, and shall ensure that the Principal Recipient and each of its Sub-recipients take, all appropriate and necessary actions to preserve, renew and keep in full force and effect its legal existence and all of the rights, licenses and permits which may be required to implement Program Activities for which they are responsible;
- 9.4 **Compliance with Laws.** The Grantee shall comply, and shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients comply, with Host Country law and other applicable laws, including, but not limited to, intellectual property law, when carrying out Program Activities;
- 9.5 **Additionality.** (Applicable only in the case of the Grantee being a Host Country) For each Program, the Grantee or the Principal Recipient acting on behalf of the Grantee shall take all necessary actions to ensure that the representation made in Section 8.6 continues to be valid during the entire Implementation Period of such Program;
- 9.6 **Notification of Additional Funding.** The Grantee or the Principal Recipient acting on behalf of the Grantee shall provide written notice to the Global Fund of any additional funding received by the Grantee, the Principal Recipient or any of its Sub-recipients, which may require an adjustment to any Program to ensure that the representation made in Section 8.7 continues to be valid during the entire Implementation Period of such Program; and
- 9.7 **Program Management.** The Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient:

- (1) maintains a sufficient number of skilled and experienced personnel with a high standard of moral and ethical integrity to manage the implementation of the Program;
- (2) maintains an adequate internal control system that effectively supports its compliance with the requirements of the relevant Grant Agreement, including, but not limited to, an accounting system that can correctly and promptly record all transactions and balances with clear references to the budget and workplan of the Program as well as final beneficiary or payee;
- (3) manages all transactions with and transfers to its Sub-recipients and Suppliers in a transparent and well-documented manner;
- (4) ensures that Grant Funds are not used to support, finance or promote violence, aid terrorist or terrorist-related activity or fund organizations known to support terrorism;
- (5) exercises sufficient oversight over its Sub-recipients to, among others, safeguard relevant Program Assets and secure timely and adequate keeping of Program Books and Records as well as reporting, as required by the relevant Grant Agreement and Sub-recipient agreements; and
- (6) secures and maintains relevant storage and other facilities for the quality use, and ensures adequate functioning, of relevant Program Assets.

**ARTICLE 10
CHANGE OF PRINCIPAL RECIPIENT; SUSPENSION; TERMINATION;
EXPIRY OF THE IMPLEMENTATION PERIOD OF A PROGRAM**

- 10.1 **Change of Principal Recipient.** For each Program, if at any time, either the Grantee or the Global Fund concludes that the Principal Recipient is not able to perform the role of Principal Recipient and to carry out relevant responsibilities properly under the relevant Grant Agreement or if, for whatever reason, the Global Fund and the Grantee wish to transfer some or all of the responsibilities of the Grantee or the Principal Recipient under the relevant Grant Agreement to another entity that is able and willing to accept those responsibilities, then such other entity may be substituted for the Grantee or the Principal Recipient in the relevant Grant Agreement. The substitution shall occur on such terms and conditions as the Global Fund and the substituting entity may agree, in consultation with the CCM or, as the case may be, the RCM or RO. The Grantee shall take all appropriate and necessary actions to ensure that the Principal Recipient and each of its Sub-recipients cooperate fully with the Global Fund and the CCM or, as the case may be, the RCM or RO to facilitate the transfer.
- 10.2 **Suspension and Termination.** For each Program, the Global Fund shall have the right to terminate or suspend the relevant Grant Agreement in whole or in part for any breach by the Grantee or the Principal Recipient of any provision of the Grant Agreement or any other reason to be determined by the Global Fund at its sole discretion, upon giving the Grantee (or the Principal Recipient acting on behalf of the Grantee) written notice. Any part of the Grant Agreement that is not terminated or suspended shall remain in full force and effect.
- 10.3 **Procedures upon Expiry of the Implementation Period or Early Termination.** Upon the expiry of the Implementation Period for a Program or the early full or partial termination of a Grant Agreement for any reason, the Grantee or the Principal Recipient acting on behalf of the Grantee shall, unless the Global Fund agrees otherwise and among other procedures which may be requested by the Global Fund:
- (1) ensure that all Health Products, goods, services and activities financed with Grant Funds, including those procured and implemented by Sub-recipients, are fully paid no later than six months after the expiry of the Implementation Period

- or, in the case of early termination of the relevant Grant Agreement, no later than the effective date of such termination;
- (2) provide the Global Fund with a final audited financial report of the Program no later than six months after such expiry or early termination;
 - (3) within seven months of such expiry or early termination, return to the Global Fund any Grant Funds that have not been expended by the Grantee, the Principal Recipient and Sub-recipients for the Program Activities as of the expiry date of the Implementation Period or the date of the termination notice (as applicable), if requested to do so by the Global Fund;
 - (4) within three months of such expiry or early termination, provide the Global Fund with an inventory of all Program Assets and a list of all receivables (if any) outstanding under the relevant Grant Agreement; and
 - (5) provide a plan (prepared in consultation with the CCM or, as the case may be, the RCM or RO) for the use of all Program Assets and receivables referred to in sub-paragraph (4) of this Section, and such plan shall be subject to the final approval of the Global Fund.

10.4 **Transfer of Program Assets.** Upon the expiry of the Implementation Period for a Program or on the earlier termination of the relevant Grant Agreement, the title to relevant Program Assets shall be transferred or otherwise disposed of in accordance with the Global Fund's written instructions.

ARTICLE 11 REFUNDS; LIMITATION OF LIABILITY; INDEMNIFICATION

11.1 **Right to Request for a Refund.** For each Program, notwithstanding the availability or exercise of any other remedies under the relevant Grant Agreement, the Global Fund may require the Grantee or the Principal Recipient acting on behalf of the Grantee to refund to the Global Fund the relevant Grant Funds in any of the following circumstances:

- (1) requests are made pursuant to the relevant provisions of the Grant Agreement;
- (2) the Grant Agreement has been terminated or suspended;
- (3) there has been a breach by the Grantee or the Principal Recipient of any provision of the Grant Agreement;
- (4) the Grantee has made a material misrepresentation with respect to any matter related to the Grant Agreement; or
- (5) the Global Fund has disbursed the Grant Funds in question to the Grantee or the Principal Recipient in error.

11.2 **Limitation of the Global Fund Liability.** For each Program, the Global Fund shall be responsible only for performing the obligations that are specifically set forth in the relevant Grant Agreement. Except for those obligations, the Global Fund for each Program shall have no liability to the CCM or, as the case may be, the RCM or RO (or any member thereof), the Grantee, the Principal Recipient, Sub-recipients, any employee or any contractor or Supplier thereof or any other person or entity under the Grant Agreement or as a result of the implementation of the Program whatsoever. Any financial or other liability that may arise as a result of the implementation of the Program shall be the sole responsibility of the Grantee and/or the Principal Recipient, and the Global Fund assumes no liability for any loss or damage to any person or property arising from the Program. The Grantee acknowledges, and shall take all appropriate and necessary actions to ensure that the Principal Recipient acknowledges, that the Principal Recipient does not implement the Program on behalf of the Global Fund. The Grant Agreement and any Disbursement made hereunder shall in no way be construed as creating the relationship of principal and agent, a

partnership in law or a joint venture between the Global Fund and the Grantee, the Principal Recipient or any other person involved in implementing the Program. The Grantee shall not, and shall take all appropriate and necessary actions to ensure that each of the Principal Recipient, Sub-recipients and Suppliers does not, under any circumstances, represent that it is an agent of the Global Fund, and shall take all reasonable precautions to avoid any perception that such relationship exists.

- 11.3 **Indemnification.** The Grantee shall defend, indemnify and hold harmless the Global Fund, its directors, officers and employees and any of the Global Fund's agents and contractors from and against (1) any and all losses of the Global Fund, its directors, officers and employees, and (2) any and all claims, liabilities, suits, actions (including charges, disbursements and reasonable fees of counsel), proceedings, damages, expenses and obligations of any kind that may be incurred by the Global Fund or asserted against the Global Fund, its directors, officers and employees by or on behalf of any person on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Grantee, the Principal Recipient, and any of its agents, employees, Sub-recipients, Suppliers, assignees, transferees, delegates or successors.

ARTICLE 12 MISCELLANEOUS

- 12.1 **Trustee.** The Global Fund and the World Bank have entered into an agreement by which the World Bank has agreed, among others, to serve as the trustee of the Trust Fund. All of the obligations of the Global Fund under any Grant Agreement are obligations of the Global Fund and the World Bank has no liability for the obligations of the Global Fund under such Grant Agreement.
- 12.2 **Privileges and Immunities.**
- (1) For each Program, nothing in or related to the Grant Agreement may be construed as a waiver, express or implied, of the privileges and immunities accorded to the Global Fund under (a) international law, including international customary law, any international conventions, treaties or agreements, (b) any national laws, including, but not limited to, the United States of America's International Organizations Immunities Act (22 United States Code 288), or (c) under the Headquarters Agreement between the Global Fund and the Swiss Federal Council dated 13 December 2004.
 - (2) In the case of the Grantee being a Host Country, within three years from the effective date of the Framework Agreement, the Grantee shall take all appropriate and necessary actions to ensure that the Global Fund is accorded with privileges and immunities through (a) the application of relevant domestic legislation that specifically confers on the Global Fund status, capacities, privileges and immunities equivalent to those enjoyed by other international organizations within the legal systems of such Host Country, and/or (b) the signing and ratification of the "Agreement on Privileges and Immunities of the Global Fund to Fight AIDS, Tuberculosis, and Malaria" adopted by the Board of the Global Fund.
- 12.3 **Modification or Amendment.** Except in the case of exercise by a party of its unilateral rights or discretionary powers explicitly granted under the relevant Grant Agreement, no modification to such Grant Agreement shall be valid unless in writing and signed by the respective duly-authorized representatives of the Global Fund and the Grantee (or the Principal Recipient acting on behalf of the Grantee).

- 12.4 **Dissemination of Information.** For each Program, the Grantee acknowledges and agrees, and shall take all appropriate and necessary actions to ensure that the Principal Recipient, each of its Sub-recipients and Suppliers acknowledge and agree, that the Global Fund shall have the right to freely publish or disseminate information derived from the implementation of the Program, including, but not limited to, any information received or discovered under Section 7.6 and any reports produced under Section 7.5 without incurring any obligation or liability to the Grantee, the Principal Recipient or any of its Sub-recipients or Suppliers.
- 12.5 **Failure to Exercise Rights.** No delay in exercising, or omission to exercise, any right, power by or remedy accruing to a party under the relevant Grant Agreement upon default shall impair any such right, power or remedy, or be construed as a waiver thereof or an acquiescence in any such default; nor shall the action of such party in respect of any default, or any acquiescence in any default, affect or impair any right, power or remedy of such party in respect of any other or subsequent default.
- 12.6 **Successors and Assignees.** For each Program, the relevant Grant Agreement shall be binding on the successors and assignees of the Grantee and the Grant Agreement shall be deemed to include the Grantee's successors and assignees. However, nothing in such Grant Agreement shall permit any assignment by the Grantee without the prior written approval of the Global Fund.
- 12.7 **Arbitration.** Any dispute, controversy or claim arising out of or relating to a Grant Agreement, or the breach, termination or invalidity thereof, which cannot be resolved through amicable negotiations, shall be finally settled by arbitration in accordance with the United Nations Commission on International Trade Law Arbitration Rules as at present in force. The Global Fund and the Grantee agree to be bound by the arbitration award rendered in accordance with such arbitration as the final adjudication of any such dispute, controversy, or claim. The appointment authority for such arbitrator shall be the International Court of Arbitration of the International Chamber of Commerce. The number of arbitrators shall be three. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English. For the avoidance of doubt, no Grant Funds may be used by the Grantee to pay for or otherwise finance any of the costs that it may incur as a result of, or otherwise in connection with, any arbitration proceedings initiated pursuant to this Section.