

Issue Date: 7 April 2014
Closing Date: Wednesday 30 April 2014
Subject: **AMENDMENT NO. 1 TO REQUEST FOR PROPOSAL (RFP) TGF 14-010**

This Amendment Number One to the Global Fund Request for Proposal TGF 14-010, issued 21 March 2014 (the “**RFP**”), amends the RFP as follows:

1. Section 2.5, Paragraph 1

The Text of Paragraph 1 of Section 2.5 of the RFP (“**Supplier Management**”) is hereby deleted in its entirety and replaced with the following text:

1. *To prevent market dominance, the Global Fund will apply the following caps to the overall allocation of ACTs through this tender to any individual supplier:*

<i>Product Type</i>	<i>Maximum Percentage of Allocation</i>
<i>AL Non-Dispersible products</i>	<i>40%</i>
<i>AL Dispersible products</i>	<i>75%</i>
<i>AS-AQ products</i>	<i>40%</i>

2. MS-Word version of Schedule H

Schedule H (“**Form of Confidentiality Agreement**”) of the RFP is attached hereto in MS-Word Format.

REQUEST FOR PROPOSAL
RFP TGF 14-010
ARTEMISININ BASED COMBINATION THERAPIES

Schedule H: Form of Confidentiality Agreement

This Confidentiality Agreement (the “**Agreement**”) entered into as of [DATE] (the “**Effective Date**”) is made by and between the Global Fund to Fight AIDS, Tuberculosis and Malaria, Chemin de Blandonnet 8, 1214 Vernier, Geneva, Switzerland (the “**Global Fund**”) and [PARTY], [ADDRESS] (collectively the “**Parties**”).

The Parties intend to provide certain confidential information to each other in connection with a potential transaction relating to the supply of Artemisinin-Based Combination Therapies, as further described in Global Fund Request for Proposal No. TGF 14-010 (the “**Purpose**”).

In this Agreement, the term “**Disclosing Party**” means the party that is providing Confidential Information, and the term “**Receiving Party**” means the party that is receiving Confidential Information.

In consideration of the Parties’ sharing of Confidential Information (as defined in Section 1 below), and as a condition to such disclosure, the Parties agree to the following terms and conditions as specified below which shall be effective from the Effective Date.

1. In this Agreement, the term “**Confidential Information**” means any information disclosed by a Disclosing Party to a Receiving Party, either directly or indirectly, which is not generally available to the public. The fact that such information has been delivered to the Receiving Party is also considered Confidential Information. Confidential Information includes not only written information, but also information transferred orally, visually, electronically or by any other means. Information will not be considered Confidential Information if the Receiving Party can prove that:
 - a. it already lawfully possesses the information,
 - b. 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,
 - c. it developed the information independently, or
 - d. the information is, or becomes, publicly available other than as a result of any action of the Receiving Party.
2. The Parties shall keep Confidential Information secret and confidential and shall not disclose it to any person except, on a need-to-know basis, to a limited group of their own, and their affiliates’, directors, officers or employees, outside professional advisors, and auditors. Each party assures that each individual to whom Confidential Information is being disclosed or made accessible according to the stipulations above is contractually and/or legally bound to hold such information in strict confidence.

3. The Receiving Party may disclose Confidential Information where disclosure has been ordered to be made as a result of a subpoena or other binding request from any competent judicial, administrative, legislative, or regulatory authority or body. 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 this Agreement for the limited purpose of the required disclosure.
4. The Parties agree that, if the Purpose does not proceed or negotiations terminate for any reason, each will, unless otherwise requested by the other party or required by any applicable law, regulation, subpoena, or order from any competent judicial, administrative, legislative or regulatory authority or body, immediately return or, at the direction of the Disclosing Party, destroy all tangible documents and any copies and extracts made thereof and, to the extent feasible with reasonable effort, delete all electronically saved confidential information.
5. Nothing in this Agreement shall impose any obligation upon the Parties to enter into any negotiations or further agreement or to cooperate exclusively with respect to the Purpose.
6. The Parties acknowledge that this Agreement sets out the entire agreement and understanding between them in relation to the subject matter hereof and that it supersedes all previous agreements, arrangements and understandings between the Parties with regard hereto.
7. This Agreement covers all Confidential Information being exchanged on and after its Effective Date in connection with the Purpose and shall remain in effect for a period of three years from this day on irrespective of entering into any agreement in connection with the Purpose or its termination.
8. Nothing in this Agreement will create a relationship of partnership, agency, or joint venture between the Parties. Neither Party is authorized to act, or make any statement, representation, or warranty on behalf of the other Party.
9. Nothing contained in this Agreement will be construed as a waiver, express or implied, of the privileges and immunities accorded to the Global Fund under (i) international law, including international customary law, any international conventions, treaties or agreements, (ii) any national laws including but not limited to the United States of America's International Organizations Immunities Act (22 United States Code 288), or (iii) under the Headquarters Agreement between the Global Fund and the Swiss Federal Council dated 13 December 2004.

[Signatures Follow.]

IN WITNESS WHEREOF, each of the Parties hereto has caused this Confidentiality Agreement to be duly executed and delivered by a duly authorized officer as of the Effective Date.

[PARTY]

By: _____

Name: _____

Title: _____

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA

By: _____

Name: _____

Title: _____
