

REQUEST FOR PROPOSALS (RFP) No. TGF-18-010

Schedule B
Form of Confidentiality Agreement
(if requested by the Bidder)

This Confidentiality Agreement (the “**Agreement**”) entered into as of **XX/XX/2018** (the “**Effective Date**”) is made by and between the Global Fund to Fight AIDS, Tuberculosis and Malaria, an international financing institution with its registered office at Chemin de Blandonnet 8, 1214 Vernier, Geneva, Switzerland (the “**Global Fund**”) and **Company X** (collectively the “**Parties**”).

The Parties intend to provide certain confidential information to each other in connection with a potential transaction relating to the procurement of Antiretroviral and other selected medicines used in HIV programs, as further described in Global Fund Request for Proposals No. **TGF-18-010** (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 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. Information will not be considered Confidential Information if:
 - a. 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;
 - b. the information is developed independently without reference to the Confidential Information; or
 - c. 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.
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:
 - a. 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 Request for Proposals No. TGF-18-010 or the disclosure pursuant to the recommendations, policies and processes of the Global Fund Office of the Inspector General or the Global Fund Sanctions Panel;
 - b. 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 this Agreement for the limited purpose of the required disclosure; and

- c. as necessary to exercise its rights under, or to enforce the terms of, the Request for Proposals No. TGF-18-010 or any agreement that the Parties may enter into in connection with the Purpose.
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 maintained in connection with Section 3 above, 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.
10. All disputes that cannot be resolved amicably by the Parties 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. The Parties agree that the arbitration award rendered in accordance with such arbitration shall be final and binding.

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.

By: _____

Name: _____

Title: _____

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA

By: _____

Name: _____

Title: _____
