



ELIMINATION 8

ANGOLA • BOTSWANA • MOZAMBIQUE • NAMIBIA
SOUTH AFRICA • SWAZILAND • ZAMBIA • ZIMBABWE

CONTRACT

FOR REVIEW OF ELIMINATION 8 SECRETARIAT HUMAN RESOURCE STRUCTURE

Between

SOUTHERN AFRICA MALARIA ELIMINATION 8 INITIATIVE SECRETARIAT

(hereinafter "SADC MALARIA ELIMINATION 8 SECRETARIAT" / "E8 SECRETARIAT" of Channel Life

Towers, 1st Floor, 39 Post Street Mall

Windhoek, Namibia)

And

.....

(hereinafter "the Consultant")

**CONTRACT NO.: E8-CONSULTANCY-002-2018-HR-Review of Elimination 8 Secretariat Human
Resource Structure**



THIS CONTRACT AGREEMENT is made

the _____ day of _____ 2019

BETWEEN

- (1) The SADC Malaria Elimination 8 Secretariat, legally registered as Southern Africa Malaria Elimination 8 Initiative Secretariat, a not-for-profit organization, organized and existing under the Laws of the Republic of Namibia with a principal place of business at Channel Life Towers, 1st floor, 39 Post Street Mall, Windhoek, Namibia, ("the E8 Secretariat"),
- (2), [*describe the entity's legal status*] and having its principal place of business at (hereinafter called "the Consultant").

WHEREAS the E8 Secretariat invited bids for the Review of Elimination 8 Secretariat Human Resource Structure and has accepted a Proposal by the Consultant for the provision of those Services based on the fees set out in the in the Consultant's Financial Proposal (hereinafter "the Services").

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Conditions of Contract referred to.
2. The following documents shall constitute the Contract between the E8 Secretariat and the Consultant, and each shall be read and construed as an integral part of the Contract:

This Contract Agreement
Part II – Special Conditions of Contract
Part I – General Conditions of Contract
Part III – Terms of Reference
Part IV – The Consultant's Proposal and Financial Proposal
Part V – Project Schedule
3. This Contract shall prevail over all other Contract documents. In the event of any discrepancy or inconsistency within the Contract documents, then the documents shall prevail in the order listed above.
4. In consideration of the payments to be made by the E8 Secretariat to the Consultant as hereinafter mentioned, the Consultant hereby covenants with the E8 Secretariat to provide the Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
5. The E8 Secretariat hereby covenants to pay the Consultant in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the Laws of Namibia on the day, month and year indicated below.

| For and on behalf of the E8 Secretariat | For and on behalf of |
|--|--|
| <p>.....</p> <p>Name: Position: Address: 39 Post Mall Street, Channel Life Towers 1st Floor, Windhoek, Namibia Contact: Email address: Date:</p> <p>In the presence of:</p> | <p>.....</p> <p>Name: Position: Address: Contact: Email address: Date:</p> <p>In the presence of:</p> |

PART I. GENERAL TERMS AND CONDITIONS FOR SERVICES

1. DEFINITIONS

The following words and expressions shall have the meanings hereby assigned to them:

- (a) **“Contract”** means the Contract Agreement entered into between the E8 Secretariat and the Consultant, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) **“Contract Documents”** means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) **“Contract Price”** means the price payable to the Consultant as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) **“Consultant”** means the natural person, private or government entity, or a combination of the above, whose bid to perform the Contract, has been accepted by the E8 Secretariat and is named as such in the **SCC** and the Contract Agreement.
- (e) **“Day”** means calendar day unless otherwise specified.
- (f) **“Dispute”** means any dispute, controversy or claim arising from, or relating to, the Contract, including the breach or termination or invalidity thereof.
- (g) **“Effective Date”** means the date specified in the **SCC**.
- (h) **“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 unfavourable weather conditions, and any other cause the effects of which could have been avoided with the exercise of reasonable diligence.
- (i) **“GCC”** means the General Conditions of Contract.
- (j) **“Services”** means the services as specified in the **SCC**.
- (k) **“SCC”** means the Special Conditions of Contract.
- (l) **“Subcontractor”** means any natural person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services, is subcontracted by the Consultant.

2. INTERPRETATION

If the context so requires it, singular means plural and vice versa.

2.1. Non-waiver

- (a) Subject to **GCC** Sub-Clause 2.1(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.
- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorised representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

2.2. Severability

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 E8 Secretariat 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.

3. SCOPE OF SERVICES

- 3.1. The Services to be supplied shall be as specified in the **SCC**.
- 3.2. The Consultant acknowledges and agrees that there may be additions, deletions or other changes that may affect the provision of the Services during the term of the Contract. Upon receiving the E8 Secretariat's written notice of any such changes, the Consultant 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 Consultant and the delivery schedule under the Contract.
- 3.3. Terms of Reference and Standards
 - 3.3.1. The Services to be performed under this Contract shall conform to the Terms of Reference and to the standards mentioned in the **SCC** and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the nature of the services supplied.
 - 3.3.2. The Consultant shall be entitled to disclaim responsibility for any specification or other document, or any modification thereof provided by or on behalf of the E8 Secretariat, by giving a notice of such disclaimer to the E8 Secretariat.
 - 3.3.3. Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the E8 Secretariat and shall be treated in accordance with **GCC** Clause 33.

4. LEGAL STATUS:

The Consultant shall be considered as having the legal status of an independent Consultant vis-à-vis the SADC Malaria Elimination Eight Initiative Secretariat (E8 Secretariat). The Consultant's personnel and subcontractor shall not be considered in any respect as being the employees or agents of E8 Secretariat.

5. ELIGIBILITY

- 5.1. The Consultant and its Subcontractors shall meet the eligibility criteria specified in the **SCC**.
- 5.2. The Consultant has the obligation to promptly notify the E8 Secretariat about any change in their or their Subcontractor legal or commercial status that might affect the eligibility conditions that prevail at the time of prequalification.

6. Fraud and Corruption

- 6.1. It is the E8 Secretariat policy to require that E8 Secretariat as well as bidders, Consultants and their subcontractors under donor-financed contracts, observe the highest standard of ethics during the procurement and execution of such contracts.¹ In pursuance of this policy, the E8 Secretariat:
 - (a) defines, for the purposes of this provision, the terms set forth below as follows:
 - (i) "corrupt practice"² is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;

¹ In this context, any action taken by a bidder, Consultant, or a sub-contractor to influence the procurement process or contract execution for undue advantage is improper.

² "another party" refers to a public official acting in relation to the procurement process or contract execution]. In this context, "public official" includes E8 Secretariat staff and employees of other organizations taking or reviewing procurement decisions.

- (ii) “fraudulent practice”³ is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
- (iii) “collusive practice”⁴ is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;
- (iv) “coercive practice”⁵ is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” is
 - deliberately destroying, falsifying, altering or concealing material evidence to the investigation or making false statements to investigators in order to materially impede an E8 Secretariat, Donor or independent investigation into allegations of a corrupt, fraudulent, coercive, or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or
 - acts intended to materially impede the exercise of the E8 Secretariat or inspection and audit rights.
- (b) It will take the following measures against the bidder recommended for award who has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question;
 - (i) will reject the bid for award;
 - (ii) will declare the bidder/the Consultant, including its affiliates, ineligible, either indefinitely or for a stated period of time, to become an E8 Secretariat Consultant;
 - (iii) will cancel or terminate any ongoing contract with the bidder /the Consultant;
 - (iv) will forfeit the bid or performance securities of the bidder /the Consultant;
 - (v) will suspend any payments due to the bidder/ Consultant, under the contract in question or any other contract the bidder/Consultant might have with the organization, until the extent of damage caused by the its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the E8 Secretariat’s contract are determined and recovered, and
 - (vi) will sue the bidder /Consultant to recover the damages caused by its engagement in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question, if they are not fully recovered by the securities and the payments otherwise due to the bidder/Consultant.

7. SOURCE OF INSTRUCTIONS:

The Consultant shall neither seek nor accept instructions from any authority external to E8 Secretariat in connection with the performance of its services under this Contract. The Consultant shall refrain from any action that may adversely affect the E8 Secretariat and shall fulfill its commitments with the fullest regard to the interests of the E8 Secretariat.

8. CONSULTANT'S RESPONSIBILITY FOR EMPLOYEES:

The Consultant shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

9. ASSIGNMENT:

The Consultant shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Consultant's rights, claims or obligations under this Contract except with the prior written consent of the E8 Secretariat.

10. SUB-CONTRACTING:

³ a “party” refers to a public official; the terms “benefit” and “obligation” relate to the procurement process or contract execution; and the “act or omission” is intended to influence the procurement process or contract execution.

⁴ “parties” refers to participants in the procurement process (including public officials) attempting to establish bid prices at artificial, non-competitive levels.

⁵ a “party” refers to a participant in the procurement process or contract execution.

In the event the Consultant requires the services of subcontractor, the Consultant shall obtain the prior written approval and clearance of the E8 Secretariat for all subcontractor. The approval of the E8 Secretariat of a sub-Consultant shall not relieve the Consultant of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

11. OFFICIALS NOT TO BENEFIT:

The Consultant warrants that no official of the E8 Secretariat has received or will be offered by the Consultant any direct or indirect benefit arising from this Contract or the award thereof. The Consultant agrees that breach of this provision is a breach of an essential term of this Contract.

12. INDEMNIFICATION:

The Consultant shall indemnify, hold and save harmless, and defend, at its own expense, the E8 Secretariat, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Consultant, or the Consultant's employees, officers, agents or subcontractor, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Consultant, its employees, officers, agents, servants or subcontractor. The obligations under this Clause do not lapse upon termination of this Contract.

13. INSURANCE AND LIABILITIES TO THIRD PARTIES:

- 13.1. The Consultant shall maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 13.2. The Consultant shall provide and thereafter maintain Professional Indemnity Insurance and all appropriate workmen's compensation insurance, or the equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 13.3. The Consultant shall also maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Consultant or its agents, servants, employees or subcontractor performing work or services in connection with this Contract.

14. GOVERNING LANGUAGE

The Contract shall be written in the English language. All correspondence and other documents pertaining to the Contract, which are exchanged by the parties, shall be written in the same language.

15. APPLICABLE LAW

The Contract shall be governed by and interpreted in accordance with the laws and in the language specified in the **SCC**.

16. PROCUREMENT INTEGRITY

- 16.1. The Consultant agrees to adhere to the highest standards of ethical competence and integrity in the performance of the Contract and to ensure that persons assigned to perform any part of the Contract will conduct themselves in a manner consistent therewith.
- 16.2. The Consultant 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 recognised standards for human rights, labour, the environment, anti-money laundering and anti-corruption.
- 16.3. The Consultant acknowledges and confirms that it is aware of and shall cause its relevant officers, employees, consultants, Consultants and Subcontractors to, comply with the Global Fund's Code of

Conduct for Consultants and the Global Fund's Sanctions Panel Procedures, annexed in the E8 Secretariat Procurement and Contracting Manual, as available on the Global Fund's website (<http://www.theglobalfund.org/en/documents/governance/>) and as updated from time to time.

- 16.4. The Consultant and its Subcontractors, as well as each of their officers, employees, consultants, Consultants and Subcontractors, shall, during the term of the Contract, strictly avoid any activities that may create real or perceived conflicts of interest with their obligations to the E8 Secretariat under the Contract.
- 16.5. The Consultant warrants that no officer, employee, consultant, Consultant or Subcontractor of the E8 Secretariat has received or will be offered by the Consultant, directly or indirectly, any gift, favor or benefit arising from the Contract or the award thereof.
- 16.6. If the Consultant has knowledge or becomes aware of any actual, apparent, or potential conflict of interest of any person affiliated with the Consultant and that person's duties with respect to the implementation of the project, the Consultant shall immediately disclose the actual, apparent, or potential conflict of interest to the E8 Secretariat.

17. RECORDS AND AUDIT

- 17.1. The Consultant shall maintain, in accordance with sound and generally accepted accounting principles, all financial and accounting related records pertaining to a Contract, and sufficient to enable the E8 Secretariat (and its authorised representative) to verify the performance of a Contract and the amounts charged and paid therein. The Consultant shall make such records available to the Global Fund or its authorised representative at reasonable times during the term of a Contract and for a period of five (5) years after the expiration or termination thereof, for the purpose of auditing a Contract. During this same period and as relevant, the Consultant shall also provide access at reasonable times to all premises used by the Consultant in connection with the performance of a Contract.
- 17.2. The E8 Secretariat and the Global Fund Local Fund Agent may conduct periodic financial audit, monitoring and quality verification of the Consultant.
- 17.3. The E8 Secretariat shall be entitled to a refund from the Consultant for any amounts shown by an audit to have been paid by the E8 Secretariat other than in accordance with the terms and conditions of a Contract.

18. INTELLECTUAL PROPERTY

18.1. Prior Intellectual Property

Any and all ownership rights, copyrights, patents, patent applications, trade secrecy rights, trademarks, service marks, trade names, know-how, data, technology and other rights (hereinafter, "Intellectual Property" or "IP") licensed to, owned or controlled by E8 Secretariat prior to the Effective Date of this Agreement (such Party's "Prior Intellectual Property") shall remain the sole property of the E8 Secretariat. Any prior intellectual property licensed to, owned, or controlled by the Consultant shall remain the sole property of the Consultant.

18.2. Joint Ownership of Project Intellectual Property

The Parties acknowledge and agree that all Intellectual Property and other work product created hereunder, including, without limitation, all inventions, discoveries, designs, programs, improvements, developments, new concepts, methods, agents, materials, and ideas, whether patentable or not, and products, processes and know-how related to the use or production thereof made, conceived or reduced to practice by the Consultant during the Term and pursuant to this agreement ("Project Intellectual Property") shall be the property of the E8 Secretariat. The Consultant may not freely use, copy, modify, create derivative works of, translate, publish, display, perform, license and distribute Project Intellectual Property without any duty of accounting to the other Party, subject to the terms and conditions of this agreement.

18.3. Modified Intellectual Property

- (a) In no event will the Consultant independently modify, create derivative works of and/or translate Project Intellectual Property (the "Modified Intellectual Property") for uses outside the scope of this agreement.
- (b) The obligations in this Clause apply to the Consultant, as well as its officers, employees, consultants, Consultants and Subcontractors.
- (c) These obligations and restrictions of confidentiality shall be effective during the term of a Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

19. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS

- 19.1. In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Consultant shall give notice and full particulars in writing to the E8 Secretariat, of such occurrence or change if the Consultant is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract.
- 19.2. The Consultant shall also notify the E8 Secretariat of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Contract. On receipt of the notice required under this Clause, the E8 Secretariat shall take such action as, in its sole discretion; it considers to be appropriate or necessary in the circumstances, including the granting to the Consultant of a reasonable extension of time in which to perform its obligations under this Contract.
- 19.3. If the Consultant is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the E8 Secretariat shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Clause 20, "Term and Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days. Force majeure as used in this Clause means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
- 19.4. The Consultant acknowledges and agrees that, with respect to any obligations under the Contract that the Consultant must perform in or for any areas in which the E8 Secretariat is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute force majeure under the Contract.

20. TERM AND TERMINATION

20.1. Term.

- (a) Unless sooner terminated pursuant to this Section, the Contract shall remain valid for the period stated in the **SCC**.
- (b) The Consultant acknowledges that the E8 Secretariat may decide, in its sole discretion, to extend the Contract beyond the period stated in the **SCC** subject to a performance review. If the E8 Secretariat decides to extend the Contract, the Parties shall execute an amendment to this Contract and the term shall be extended to a date to be specified by the E8 Secretariat in its approval for extension.

20.2. Termination

- (a) Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Clause 21.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.
- (b) The E8 Secretariat reserves the right to terminate without cause this Contract at any time upon fifteen (15) days prior written notice to the Consultant, in which case the E8 Secretariat shall reimburse the Consultant for all reasonable costs incurred by the Consultant prior to receipt of the notice of termination.

- (c) In the event of any termination by the E8 Secretariat under this Clause, no payment shall be due from the E8 Secretariat to the Consultant except for work and services satisfactorily performed in conformity with the express terms of this Contract.
- (d) Should the Consultant be adjudged bankrupt, or be liquidated or become insolvent, or should the Consultant make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Consultant, the E8 Secretariat may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Consultant shall immediately inform the E8 Secretariat of the occurrence of any of the above events.

20.3. Termination for Default

- 20.3.1. The E8 Secretariat, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Consultant, may terminate the Contract in whole or in part:
 - (a) if the Consultant fails to perform any or all of the Services within the period specified in the Contract, or within any extension thereof granted by the E8 Secretariat pursuant to **GCC** Clause 34;
 - (b) if the Consultant fails to perform any other obligation under the Contract; or
 - (c) if the Consultant, in the judgment of the E8 Secretariat has engaged in fraud and corruption, as defined in **GCC** Clause 6, in competing for or in executing the Contract.
 - (d) if the Consultant, doesn't meet the eligibility criteria that prevailed at the time of prequalification.
- 20.3.2. In the event the E8 Secretariat terminates the Contract in whole or in part, pursuant to **GCC** Clause 20.2.1(a), the E8 Secretariat may procure, upon such terms and in such manner as it deems appropriate, Services like those undelivered or not performed, and the Consultant shall be liable to the E8 Secretariat for any additional costs for such similar Services. However, the Consultant shall continue performance of the Contract to the extent not terminated.

20.4. Termination for Insolvency

The E8 Secretariat may at any time terminate the Contract by giving notice to the Consultant if the Consultant becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Consultant, if such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the E8 Secretariat

20.5. Termination for Convenience

The E8 Secretariat may terminate the Contract in whole or in part at any time if the E8 Secretariat determines that such a termination is in its best interests. The E8 Secretariat shall effect the termination by sending a written notice of such termination to the Consultant, which notice will state that termination is for the E8 Secretariat's convenience, the extent to which performance of the Contract is terminated and the termination date. Unless otherwise instructed by the E8 Secretariat, the Consultant shall stop work immediately on receipt of the notice and follow the instructions and directions of the E8 Secretariat. In the event of a termination for convenience, the Consultant shall be entitled to be paid for Services already delivered or performed by the Consultant prior to the effective date of termination.

20.6. Procedures Upon Termination or the Expiry of Contract Term

- 20.6.1. Upon full or partial termination of the Contract for any reason or the expiry of the Program Term, the Consultant shall, among other procedures which may be requested by the E8 Secretariat:
 - (a) immediately return to the E8 Secretariat any Grant funds that have not been expended by the Consultant and sub-contractors as of the date of the termination notice or the expiry date of the Program Term (as applicable), if requested to do so by the E8 Secretariat;
 - (b) provide to the E8 Secretariat a final audited financial report of the Program;
 - (c) provide to the E8 Secretariat an inventory of all assets and receivables purchased with Grant funds;and

- (d) if so requested by the E8 Secretariat, provide a plan for the use of all assets and receivables referred to in sub-paragraph (c) above (the "Close-out Plan"). The Close-out Plan shall be subject to the final approval of the E8 Secretariat.

21. SETTLEMENT OF DISPUTES

- 21.1. **Amicable Settlement:** The E8 Secretariat's and the Consultant shall make every effort to resolve amicably by direct informal negotiations any disagreement or dispute arising between them under or in connection with the Contract.
- 21.2. **Arbitration:**
- 21.2.1. If after thirty (30) days from the commencement of such informal negotiations both parties have been unable to resolve amicably the contract dispute then either the E8 Secretariat or the Consultant may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after performance of the Services under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure and at the place specified in the SCC.
- 21.2.2. Notwithstanding any reference to arbitration herein,
- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) the E8 Secretariat shall pay the Consultant any monies due the Consultant.
- 21.2.3. The initiation of arbitral proceedings shall not be deemed a termination of this Contract.

22. CODE OF CONDUCT

- 22.1. The Consultant is obliged to perform its obligations in accordance with the requirements of The Global Fund Code of Conduct for Consultants. The Global Fund to Fight AIDS, Tuberculosis and Malaria's Code of Conduct for Consultants is applicable to this Contract. It is available at www.theglobalfund.org.
- 22.2. The Consultant shall ensure that it has in place an organisational Code of Conduct/Good Governance, whistle-blowing and anti-corruption policies or procedures.

23. TAXES

The E8 Secretariat shall withhold Withholding taxes that may be due to the Receiver of Revenue, however the Consultant shall be responsible for the payment of any income taxes, social security taxes or other taxes which may apply, and will defend, indemnify and hold E8 Secretariat harmless from and against all taxes, tax withholdings, penalties and assessments related to the monies paid to Consultant hereunder.

24. CONTRACT PRICE

Prices charged by the Consultant for performance of the Related Services performed under the Contract shall not vary from the prices quoted by the Consultant in its bid, with the exception of any price adjustments authorised in the SCC.

25. TERMS OF PAYMENT

- 25.1. The E8 Secretariat shall pay for all Services performed, and any other amounts payable to the Consultant in accordance with the Contract.
- 25.2. **Bank Account:**
- 25.2.1. The Consultant shall ensure that:

- (a) Grant funds in the possession of the Consultant remain, to the extent practicable, in a separate bank account reserved only for grant funds provided under this Contract, which bears interest at a reasonable commercial rate available in the Country where the bank account is held, until they are expended for programme purposes;
 - (b) If local conditions permit, the bank account should be opened under the name of the Global Fund programme. Alternatively, an existing bank account under the Consultant's name may be used, but only with the agreement of the E8 Secretariat. The Consultant's bank account must not have access to any credit (i.e. overdrafts) or be used for investments. If the Consultant's project needs to make payments in local currency and US dollars, then two bank accounts should be opened, or one bank account with two currencies. Upon completion of the project, it is the responsibility of the Consultant to close the related bank account(s) and reimburse any remaining balances to the E8 Secretariat.
 - (c) It shall operate bank accounts with a double signature. This double signature should be in line with the internal control framework of the Consultant.
 - (d) Grant funds are deposited in a bank that is fully compliant with all applicable local and international banking standards and regulations, including capital adequacy requirements; and
 - (e) At all times, Grant funds are held in cash and may be withdrawn at any time, in full, upon demand.
- 25.3. Subject to Clause 25.2.1 (a) and (b) above, the Consultant acknowledges and agrees that the E8 Secretariat may refuse to make payments under the Contract to a bank account that is not held in the name of the Consultant. The payment method and the Consultant's bank details are specified in the **SCC**.
- 25.4. Interest. Any interest on Grant funds disbursed by the E8 Secretariat to the Consultant under this Contract shall be accounted for and used solely for the purposes of the provision of Services under this Contract.
- 25.5. Revenues. Any revenues earned by the Consultant from Project activities, including but not limited to revenues from "social marketing" activities, shall be accounted for and used solely for Program purposes.
- 25.6. The E8 Secretariat does not guarantee that it will procure any minimum quantity of Services under this Contract. Subject to the terms and conditions of this Contract, the Consultant will only be paid for Services provided under this Contract after a purchase order is issued to Consultant by the E8 Secretariat or as otherwise specified by this Contract.
- 25.7. The payment methodology in the **SCC** shall constitute the entire compensation due to the Consultant for Services provided under this Contract. The payment methodology includes all applicable taxes, fees, overhead, and all other direct and indirect costs incurred or to be incurred by the Consultant.
- 25.8. All payments shall be paid as specified in the **SCC** and shall be made in the currency indicated in the **SCC**. The E8 Secretariat 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 Consultant.
- 25.9. Invoice Requirements. The Consultant shall invoice the E8 Secretariat only for Services satisfactorily provided at the amounts stipulated in the **SCC**. The Consultant shall submit invoices and necessary supporting documentation, no more frequently than once a month, and no later than thirty (30) days after Services have been provided, and by the conditions stipulated in **GCC** Clause 34 and upon fulfillment of all other obligations stipulated in the Contract. Each invoice must include the Contract or applicable Purchase Order reference number, as the case may be, and must be sent to the address stated in the **SCC**.
- 25.10. Payments shall be made promptly by the E8 Secretariat, but in no case later than thirty (30) days after submission of an invoice or request for payment by the Consultant, and after the E8 Secretariat has accepted it. Invoices that:
- (a) are incorrectly addressed;
 - (b) do not include the correct Contract or applicable Purchase Order reference number, as the case may be;
 - (c) do not conform to the specifications described within the Contract; or

- (d) 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 Consultant for correction and resubmission to the E8 Secretariat for payment.
- 25.11. Unless otherwise specified in the Contract or applicable Purchase Order, as the case may be:
- (a) Any expense or liability incurred by the Consultant will not be paid unless it has been authorised or approved in writing by an authorised representative of the E8 Secretariat prior to such expense or liability being incurred; and
 - (b) The Consultant will be solely responsible for paying such expense or meeting such liability.

26. CHILD LABOUR

- 26.1. The Consultant represents and warrants that neither it, nor any of its Consultants is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Clause 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical mental, spiritual, moral or social development.
- 26.2. Any breach of this representation and warranty shall entitle the E8 Secretariat to terminate this Contract immediately upon notice to the Consultant, at no cost to the E8 Secretariat.

27. ANTI-TERRORISM

The Consultant shall undertake all reasonable efforts to ensure that none of the funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by the E8 Secretariat hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm> . This provision must be included in any sub-contracts entered into under this Contract.

28. OBSERVANCE OF THE LAW

The Consultant shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

29. SEXUAL EXPLOITATION:

- 29.1. The Consultant shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by it or by any of its employees or any other persons who may be engaged by the Consultant to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Consultant shall refrain from, and shall take all appropriate measures to prohibit its employees or other persons engaged by it from, exchanging any money, goods, services, offers of employment or other things of value, for sexual favors or activities, or from engaging in any sexual activities that are exploitive or degrading to any person. The Consultant acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of this representation and warranty shall entitle the E8 Secretariat to terminate the Contract immediately upon notice to the Consultant, without any liability for termination charges or any other liability of any kind.
- 29.2. The E8 Secretariat shall not apply the foregoing standard relating to age in any case in which the Consultant's personnel or any other person who may be engaged by the Consultant to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Consultant's personnel or such other person who may be engaged by the Consultant to perform any services under the Contract.

30. STATUS OF THE E8 SECRETARIAT AND THE GLOBAL FUND

30.1. E8 SECRETARIAT

Notwithstanding any provision in the Contract, the Consultant acknowledges that the E8 Secretariat is an institution of the Southern Africa Development Community (SADC) Ministerial initiative, designed as a platform for regional collaboration towards malaria elimination within the eight SADC countries i.e. Angola, Botswana, Mozambique, Namibia, South Africa, Swaziland, Zambia, and Zimbabwe. Borders. The E8 Secretariat is a not-for-profit organization, organized and existing under the Laws of the Republic of Namibia. The E8 Secretariat is a Recipient of Grant Funds from the Global Fund to Fight AIDS, Tuberculosis and Malaria (The Global Fund) for the implementation of the malaria elimination programme.

30.2. The Global Fund

Notwithstanding any provision in the Contract, the Consultant acknowledges that the Global Fund is an innovative financing institution which grants funds to support national and regional programmes that prevent, treat and care for people with diseases of HIV/AIDS, tuberculosis and/or malaria. It is an international organisation with status, privileges and immunities provided under: (i) the Headquarters Agreement; (ii) any national laws, including the International Organizations Immunities Act of the United States of America (22 United States Code 288 and 288f – 6); and (iii) international law, including international customary law, international conventions, treaties and/or agreement.

30.3. Country Coordination Mechanism

30.3.1. E8 Technical Committee and E8 Secretariat Board: The Parties acknowledge that the E8 Secretariat Board and the E8 Technical Committee jointly coordinate the submission of proposals to the Global Fund and monitors the implementation of Project activities in the E8 Member countries, where the Global Fund is providing funding for related activities. This contract shall be required to update the E8 Technical Committee and E8 Secretariat Board on implementation progress.

30.3.2. The E8 Secretariat shall cooperate with the E8 Technical Committee and E8 Secretariat Board to accomplish the purpose of this Contract. The E8 Secretariat shall be available to meet with these two institutions to discuss plans, share information and communicate on matters that relate to the Program. The E8 Secretariat shall provide to the Technical Committee and the Board, upon their request, a copy of reports and material information relating to the Program for information purposes. This may include, but is not limited to, Requests for Disbursements, items delivered to fulfill a condition precedent, implementation letters and any amendment to this Contract.

30.4. Local Fund Agent (LFA)

30.4.1. The Consultant acknowledges that in terms of the Grant Agreement between the E8 Secretariat and the Global Fund, the Global Fund has retained the services of Pricewaterhouse Coopers, Zimbabwe, as Local Fund Agent (the “LFA”), to perform certain functions on behalf of the Global Fund, including:

30.4.2. assessment of the capacity of the Consultant to implement the Programme and manage Grant funds; verification of the Consultant’s progress towards the objectives of the Programme, use of Grant funds and compliance with the terms and conditions of this Contract.

30.4.3. **Cooperation.** The Consultant shall cooperate fully with the LFA to permit the LFA to carry out its functions. To this end, the Consultant shall, among other things:

- (a) provide to the LFA copies all reports, Requests for Disbursement and other communications submitted to the E8 Secretariat under this Contract;
- (b) Provide to the LFA copies of all audit reports submitted to the E8 Secretariat;
- (c) permit the LFA to perform ad hoc site visits at the times decided by the LFA;
- (d) permit the LFA to review Programme Books and Records, (as described in Clause 15 of this Contract) at the times and places decided by the LFA;
- (e) permit the LFA to interview its personnel;
- (f) cooperate with the LFA to identify additional training and capacity building that the Consultant may need to implement the Programme; and
- (g) cooperate with the LFA in other ways that the E8 Secretariat and the Global Fund may specify.

31. CONSULTANT RESPONSIBILITIES AND UNDERTAKINGS

- 31.1. The Consultant shall perform the Services specified in the **SCC** to the E8 Secretariat's requirements during the term of the Contract and in consideration for the payment of the Contract Price.
- 31.2. The Consultant shall perform the Services with economy, efficiency and effectiveness to ensure that the Services provided are of the right quality, level and cost to achieve value for money of the E8 Secretariat. To this end, the Consultant shall ensure that it authorises the cost of resources, performs task with reasonable effort and meets the objectives of the Contract.
- 31.3. 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.
- 31.4. The Consultant shall perform its obligations according to the performance standards provided in the Contract.
- 31.5. The Consultant 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 Consultant shall at all times support and safeguard the E8 Secretariat's legitimate interests in any dealings with third parties.
- 31.6. As applicable, the Consultant shall deliver the services within the period specified in the Contract.

31.7. **Reporting Responsibilities and Tasks**

31.7.1. Monitoring.

The Contractor's activities conducted and records maintained pursuant to this Contract shall be subject to monitoring and evaluation by the E8 Secretariat or its duly appointed representatives.

31.7.2. Progress Reports.

The Contractor shall submit brief, periodic, progress reports to the E8 Secretariat, as requested.

31.8. **Warranties**

31.8.1. **General.** The Consultant warrants and represents during the term of the Contract that:

- (a) It is a legal entity validly existing under the laws of the jurisdiction in which it was formed, 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 Consultant 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;
- (b) It shall not use any of the money from this Contract to support or promote violence, to aid terrorists or terrorist related activities, to conduct money-laundering activities or to fund groups or organisations known to support terrorism or that are involved in money-laundering activities. The Consultant acknowledges and agrees that the E8 Secretariat may terminate this Contract upon the occurrence of any transaction that contravenes this provision. The Consultant shall bear the sole and ultimate responsibility, financial and otherwise, for any losses resulting from any such transaction referred to above and shall reimburse the E8 Secretariat the amount of any losses or gains resulting therefore.
- (c) The Contract has been duly executed and delivered by the Consultant and is enforceable in accordance with its terms. The Consultant has all the necessary power, authority and legal capacity to enter into, and perform the Contract;
- (d) The Consultant's activities are, and at all times, operated in compliance with all applicable laws, including intellectual property law;
- (e) There are no claims, investigations or proceedings in progress or pending or threatened against the Consultant, which, if determined adversely, would have a material adverse effect on the ability of the Consultant to perform any of its obligations under the Contract, and/or on the reputation of the E8 Secretariat;
- (f) The Consultant shall immediately provide written notice to the E8 Secretariat of any claim, investigation or proceeding, or any audit or investigation relating to the Consultant, or the operations of the Consultant; and

- (g) The Consultant shall promptly provide written notice to the E8 Secretariat if it knows or suspects that any of its warranties and representations in the Contract may not be correct or complete.

31.8.2. **Services**

- (a) The Consultant represents and warrants that the term of the warranty (“Warranty Period”) shall be the greater of the Term of this Contract or any other warranty general offered by The Consultant, its suppliers, or manufacturers to customers of its services. The Services provided under this Contract shall conform to the terms and conditions of this Contract throughout the Warranty Period. Any nonconformance of the Services to the terms and conditions of this Contract shall constitute a “defect” and shall be considered “Defective.” If the Consultant receives notice of a Defect during the Warranty Period, then The Consultant shall correct the Defect, at no additional charge.
 - (b) The Consultant represents and warrants that the E8 Secretariat is authorised to possess and use all equipment, materials, software, and deliverables provided under this Contract.
 - (c) The Consultant represents and warrants that all services provided under this Contract shall be provided in a timely and professional manner, by qualified and skilled individuals, and in conformity with standards generally accepted in the Consultant’s industry.
 - (d) If the Consultant fails to provide the Services as warranted, then the Consultant will re-provide the services at no additional charge. If the Consultant is unable or unwilling to re-provide the services as warranted, then the E8 Secretariat shall be entitled to recover the fees paid to The Consultant for the Defective goods or services. Any exercise of the E8 Secretariat’s rights under this Section shall not prejudice the E8 Secretariat’s rights to seek any other remedies available under this Contract or applicable law.
- 31.9. Inspection and Acceptance. The E8 Secretariat shall have the right to inspect all Services provided by the Consultant under this Contract. If, upon inspection, the E8 Secretariat determines that the Services are Defective, the E8 Secretariat shall notify the Consultant, and the Consultant shall re-provide the services at no additional cost to the E8 Secretariat. If after a period of thirty (30) days following performance of Services the E8 Secretariat does not provide a notice of any Defects, the Services shall be deemed to have been accepted by the E8 Secretariat.

32. **PERFORMANCE OF SERVICES**

- 32.1. As applicable, the Consultant shall perform the Services specified in the **SCC**. The deliverables under the Contract are detailed in Part VI of the attachments to the Contract.

33. **MANAGEMENT OF FUNDS**

- 33.1. Use of Funds. The Consultant shall ensure that all Grant funds are prudently managed and shall take all necessary action to ensure that Grant funds are used solely for Project purposes and consistent with the terms of this Contract. Accordingly, the Consultant shall use its reasonable efforts to ensure that Grant funds are not used by it or by any Subcontractor to support or promote violence, to aid terrorists or terrorist-related activity, to conduct money-laundering activities or to fund organizations known to support terrorism or that are involved in money-laundering activities.
- 33.2. Anti-Money Laundering Requirements. The Consultant acknowledges and agrees that, pursuant to the Global Fund’s commitment to prevent money-laundering activities:
 - (a) Any transaction involving the transfer, disbursement, transportation, transmission, or exchange of Grant funds (including wire transfers and currency exchanges) shall be carried out by the Consultant’s beneficiary bank into which Grant funds are disbursed, unless another means of transmittal is specifically authorised in writing by the ES Secretariat prior to carrying out the transaction;
 - (b) All transactions involving Grant funds that are effected through electronic wire transfer or currency exchange shall be properly recorded;
 - (c) All currency exchanges involving Grant funds shall be carried out through established and regulated financial institutions;

- (d) Currency exchange operations which are not carried out through established and regulated financial institutions shall not be regarded as “project activities” (defined as “activities directly supporting the programme”); and
 - (e) The transfer, disbursement, transportation, transmission, or exchange of Grant funds, by any means: (i) to third parties not directly related to the implementation of the Project and this Contract; or (ii) for activities not directly supporting the Project, is strictly prohibited.
- 33.3. **Inclusion of Anti-Money Laundering Requirements in subcontract agreements.** The Consultant shall include the provisions of Clause 33.2 of this Contract (amended to reflect subcontractor’s status) in all subcontract agreements and shall be responsible for ensuring strict compliance with those provisions by any Subcontractor.
- 33.4. **Remedies and Responsibilities for Violations of Anti-Money Laundering Requirements.** The Consultant acknowledges and agrees that:
- (a) The E8 Secretariat may exercise its right to terminate or apply restrictions to this Contract upon the occurrence of any transaction involving Grant funds that contravenes the terms of Clause 14.2 or 14.3 of this Contract (any such transaction, an “Unauthorised Transaction”); and
 - (b) The Consultant shall bear sole responsibility, financial and otherwise, for any losses resulting from Unauthorised Transactions and shall reimburse the E8 Secretariat for the amount of any losses or gains resulting from Unauthorised Transactions.

34. **DISBURSEMENT OF GRANT FUNDS**

- 34.1. **Disbursements:** The Parties acknowledge that any disbursement under this Contract is subject to availability of Grant Funds to the E8 Secretariat from the Global Fund.
- 34.2. **Conditions:** The E8 Secretariat will not make any disbursement of Grant funds to the Consultant unless Consultant has:
- (a) submitted information indicating that the Consultant has opened a separate bank account dedicated exclusively for the Grants Funds and has provided information of its authorised signatories;
 - (a) the Consultant has submitted to the E8 Secretariat a Request for Disbursement, signed by the person or persons authorised by the Consultant to do so, in form and substance satisfactory to the E8 Secretariat, at a time acceptable to the E8 Secretariat;
 - (b) the Consultant has fulfilled, in a form and substance, satisfactory to the E8 Secretariat and the LFA, any conditions, that relate to that disbursement; and
 - (c) the Consultant has provided to the E8 Secretariat that were due prior to the date of the Request for Disbursement.
- 34.3. **Programme Ending Date.** The E8 Secretariat will not authorise disbursement of any Grant funds after the Ending Date unless the Parties amend this Contract to extend its term or duration as described in Clause 36 of this Contract).

35. **CHANGE ORDERS AND CONTRACT AMENDMENT**

- 35.1. Pursuant to the Financial Regulations and Rules of the E8 Secretariat, only the E8 Secretariat Authorised Official possesses the authority to agree on behalf of the E8 Secretariat to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Consultant. Accordingly, no modification or change in this Contract shall be valid and enforceable against the E8 Secretariat unless provided by an amendment to this Contract signed by the Consultant and jointly by the E8 Secretariat Authorised Official.
- 35.2. If any such change causes an increase or decrease in the cost of, or the time required for, the Consultant’s performance of any provisions under the Contract, an equitable adjustment may be made in the Contract Price or in the completion schedule, or both, and the Contract may accordingly be amended. Any claims by the Consultant for adjustment under this Clause must be asserted within thirty (30) days from the date of the Consultant’s receipt of the E8 Secretariat’s change order.
- 35.3. Prices to be charged by the Consultant for any services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Consultant for similar services.

- 35.4. Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

36. EXTENSION OF TIME

- 36.1. If at any time during performance of the Contract, the Consultant or its Subcontractors should encounter conditions impeding timely performance of the Services pursuant to **GCC** Clause 32, the Consultant shall promptly notify the E8 Secretariat in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Consultant's notice, the E8 Secretariat shall evaluate the situation and may at its discretion extend the Consultant's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.
- 36.2. Except in case of Force Majeure, as provided under **GCC** Clause 19, a delay by the Consultant in the performance of its Delivery and Completion obligations shall render the Consultant liable to the imposition of liquidated damages pursuant to **GCC** Clause 37, unless an extension of time is agreed upon, pursuant to **GCC** Sub-Clause 36.1.

37. LIQUIDATED DAMAGES

- 37.1. The Consultant shall issue any delay notice to the E8 Secretariat upon non-compliance of the schedule as per the agreed and signed detailed project plan under the Contract. The Consultant may request for extension of time provided the total extension period for its performance provided the extension period does not exceed thirty (30) Days.
- 37.2. Except as provided under **GCC** Clause 19, if the Consultant fails to perform any or all of the Services within the period specified in the Contract inclusive of the extension period and such failure is not due to factors attributable in whole or in part to the E8 Secretariat or to factors beyond the Consultant's control, the E8 Secretariat may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the **SCC** of the unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in the **SCC**. Once the maximum is reached, the E8 Secretariat may terminate the Contract pursuant to **GCC** Clause 20.
- 37.3. It shall be the responsibility of both Parties to take all reasonable precautions to avert the effects of any delays.

38. NOTICES

- 38.1. 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 specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt. A notice shall be effective when delivered or on the notice's effective date, whichever is later.
- 38.2. The Consultant shall promptly notify the E8 Secretariat in writing of any change in the Consultant's contact or address details for notices. The E8 Secretariat 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 authorised representative of the Consultant.

39. 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 Consultant as soon as it commences to perform under the Contract. The entire agreement between the E8 Secretariat and the Consultant constitutes the number pages and the documents specified in the **SCC**.

PART II. SPECIAL CONDITIONS OF CONTRACT

The following Special Conditions of Contract (**SCC**) shall supplement and / or amend the General Conditions of Contract (**GCC**). Whenever there is a conflict, the provisions herein shall prevail over those in the **GCC**.

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| GCC 1.1 | DEFINITIONS: The following definitions are provided to clarify terms related to the provision of Services for the Review of Elimination & Secretariat Human Resource Structure under this Contract. |
| GCC 1.1(f) | Notwithstanding the Signature date, the Effective Date of the Contract shall be, 2019 . |
| GCC 1.1 (i) | The Services to be performed are specified in the Terms of Reference, attached to this Contract and in SCC 31.1. |
| GCC1.1 (l) | The Consultant is |
| GCC 3.3.1 | The Services shall conform to any quality standards applicable to the specific industry. |
| GCC 5.1 | Consultants and subcontractors that are included World Bank's Listings of Ineligible Firms and Individual or World Bank's Corporate Procurement Listing of Non-Responsible Vendors or in a "UN Ineligibility List" or declared as ineligible by other international donor organisations, are ineligible. |
| GCC 15 | The language shall be English. The governing law shall be the Law of Namibia. |
| GCC 20 | The duration of the Contract shall be Two months . The Consultant shall provide the Services within a period of twenty days . |
| GCC 21.2.1 | The rules of procedure for arbitration proceedings pursuant to GCC Clause 21.2 shall be as follows: 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 Windhoek, Namibia. The language to be used in the arbitral proceedings shall be English. |
| GCC 24 | The prices charged for the Services performed shall not be adjustable. The firm and fixed Unit Price for the Services are as per the fees in the attached Price Schedule . |
| GCC 25.2.1 | There shall be no requirement on the Consultant to open a separate Bank Account for this Contract. |
| GCC 25. | a. The Consultant's compensation shall be contingent upon the satisfactory provision of Services as set forth in SCC 31.1 and the Terms of Reference to this Contract. b. The Consultant shall be compensated based upon, c. For purposes of this Contract, all payments shall be made via Electronic Funds Transfer to the following account: Account holder: Bank Name and address: Account Number: Swift Code: IBAN No.: |

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| GCC 25.8 | The currency of all payments shall be |
| GCC 25.9 | Invoices shall be sent to: Contracts and Procurement Manager E8 Secretariat 39 Post Mall Street, Channel Life Towers, 1st Floor Windhoek, Namibia Email: procurement@elimination8.org |
| GCC 25.10 | Payment shall be made no less than thirty (30) days after submission of an invoice. |
| GCC 31.1 | The Services to be performed by the Consultant under the Contract, and more specifically detailed in the Terms of Reference are: |
| GCC 32.1 | The Services to be performed are detailed in more specifically detailed in the Terms of Reference and in SCC 31.1 above. |
| GCC 37.2 | The liquidated damages shall be one (1) % per week The maximum amount of liquidated damages shall be: five (5) % |
| GCC 38.1 | For notices, the E8 Secretariat's address shall be: Attention: The Director Street Address: 39 Post Mall Street, Channel Life Towers, 1st Floor, Windhoek, Namibia The Consultant's address shall be: |
| GCC 39 | This Contract consists of the following documents: The Contract Agreement Part I – Special Conditions of Contract Part II – General Conditions of Contract Part III – Terms of Reference Part IV – The Consultant's Proposal and Price Schedule Part V – Project Schedule |