

Debt Swap Agreement

amongst

**The Kingdom of Spain
("Creditor")**

and

**The Democratic Republic of the Congo
("Borrower")**

and

**The Global Fund to Fight AIDS, Tuberculosis and Malaria
(the "Global Fund")**

**for an amount up to 8,274,957.14 United States Dollars
(the "Debt Swap Amount")**

The Creditor and the Borrower, having signed the “Loan Agreements”:

- *Accord Bilateral pour la Consolidation de la Dette de la Republique Democratique du Congo*, signed in Madrid on 26 July 2011 and in Kinsasha on 9 November 2011 (Ref. ICO: 11038002.1, 11038002.2 and 11038002.3) and
- *Accord Bilateral pour la Consolidation de la Dette de la Republique Democratique du Congo*, signed in Madrid on 20 May 2011 and in Kinsasha on 9 November 2011

desire to advance their shared interests in debt relief to enhance aid harmonization and implementation of the Paris Declaration on Aid Harmonization and Effectiveness, and in resource mobilization in the fight against AIDS, tuberculosis and malaria in the Democratic Republic of the Congo, through the cancellation of an amount up to 8,274,957.14 United States Dollars (the “Debt Swap Amount”) and investment of a counterpart amount of funds in Global Fund-financed programs in the Democratic Republic of the Congo through the “Debt2Health Program”.

The Borrower, the Creditor and the Global Fund hereby enter into this Debt Swap Agreement (“Agreement”):

Clause 1

Debt Release

- 1.1 In accordance with the terms of this Agreement, the Creditor hereby agrees to release the Borrower from its obligation to pay the amounts of principal and interest due under the above mentioned Loan Agreements for a maximum of the Debt Swap Amount, conditional upon the satisfaction of the conditions of this Agreement.
- 1.2 Upon the payment of the instalment by the Borrower to the Global Fund specified in Clause 2 of this Agreement (the “Counterpart Payment”), the Debt Swap Amount representing a total of 8,274,957.14 United States Dollars will be deemed provisionally cancelled as of the date upon which the Global Fund provides the relevant payment receipt confirmation to the Creditor described in Clause 2.3. The definitive cancellation of the Debt Swap Amount will take place only when the Global Fund has provided to the Creditor sufficient evidence of the disbursement of the Counterpart Payment towards “the Project” (as defined in Clause 3.1). Such

evidence will be provided in accordance with the procedure referred to in Clause 3.4.

Clause 2

Payment Procedures

2.1 The Counterpart Payment by the Borrower or its designated agent will be made to the Global Fund no later than six months after the date this Agreement becomes enforceable in accordance with Clause 5.2 (the “Counterpart Payment Date”) as set forth below:

- USD 3,159,549.20

Payable by the Borrower or such agent as the Borrower may so designate

- EUR 217,423.28

Already disbursed by the Borrower and therefore payable by *Instituto de Credito Oficial*, Kingdom of Spain, on behalf of the Borrower

The Counterpart Payment shall be made pursuant to the Contribution Agreement attached as Annex 1 to this Agreement (the “Contribution Agreement”).

2.2 The Borrower and the Global Fund will keep records of the Counterpart Payment in accordance with their respective policies and procedures. Such records will be retained by the Global Fund for inspection for a period of at least three (3) years after the Counterpart Payment Date (as defined in Clause 2.1).

2.3 Following the receipt of the Counterpart Payment and in any case no later than 2 weeks after its receipt, the Global Fund will provide evidence to the Creditor and the Borrower that a Counterpart Payment for the Debt2Health Program has been made. Such evidence will be provided in the form of a written notice from the Global Fund to the Creditor and the Borrower confirming receipt of the Counterpart Payment.

Clause 3

Use of the Counterpart Payment

3.1 Subject to Clauses 3.6 and 3.7, the Counterpart Payment will be utilized for the purpose of funding, in whole or in part, activities registered on the Global Fund’s

register of unfunded quality demand for the Borrower's program for the fight against Malaria ("the Project").

- 3.2 Any interest accrued on the Counterpart Payment following receipt by the Global Fund will be assigned to the Global Fund's general pool of funds and will not be allocated specifically to the Project.
- 3.3 The Global Fund will apply its generally applicable procedures and policies, as amended from time to time, for the approval and management of the Project. The parties acknowledge that the disbursement by the Global Fund of the Counterpart Payment to fund the Project is subject to the approval of such funding by the Global Fund Board and the subsequent inclusion of such Project under one or more Global Fund Program Grant Agreement(s). The Project will be subject to the Global Fund's policies and practices on financial and programmatic reporting and monitoring, as well as any other terms and conditions set forth in the relevant Program Grant Agreement(s). No clause in this Agreement will be construed as providing the Creditor or the Borrower with the ability to exercise any right in the Global Fund's approval, management, oversight, or governance of the Project or any Global Fund program.
- 3.4 For each year until the activities funded by the Counterpart Payment are completed, the Global Fund will provide the Creditor and the Borrower with an annual report for the calendar year ending 31 December on the progress of the relevant Global Fund grants including the Project. This annual report will include the amount of the Counterpart Payment allocated to the Project (as approved by the Global Fund Board and incorporated under Program Grant Agreement(s)) and the performance of the relevant grants against the performance indicators specified in the relevant Program Grant Agreement(s), as verified by a contractor engaged by the Global Fund to oversee, verify and report on grant performance (the "Local Fund Agent"). The reports will be provided no later than six months after the end of the corresponding calendar year.
- 3.5 The costs associated with engagement of the Local Fund Agent or any other administrative costs of the Global Fund will not be paid out of the Counterpart Payment.

- 3.6 In the event that the Global Fund decides that it is not possible or advisable to use the Counterpart Payment, in whole or in part:
- 3.6.1 to fund the Project for the reason that a grant including the Project has not been approved or renewed by the Board, or has been terminated or suspended, the Global Fund reserves the right to reallocate the undisbursed amount of the Counterpart Payment to other activities registered on the Global Fund's register of unfunded quality demand for the Borrower;
 - 3.6.2 to fund other activities on the Global Fund's register of unfunded quality demand in accordance with Clause 3.6.1 above, for the reason that a grant including any such activity has not been approved by the Board or renewed, or has been terminated or suspended, the Global Fund reserves the right to notionally reallocate the undisbursed amount of the Counterpart Payment to other grant programs for the Borrower through the unrestricted general pool of funding;
 - 3.6.3 to fund grant programs for the Borrower in accordance with Clause 3.6.2 above within five (5) years after the Counterpart Payment Date, for the reason that a grant program has not been approved by the Board or renewed, or has been terminated or suspended, the undisbursed amount of the Counterpart Payment shall become part of the Global Fund's unrestricted sources of funds, to be available for uses of funds approved by the Global Fund Board in accordance with the mandate of the Global Fund.
- 3.7 In the event of a re-allocation, in whole or in part, of the Counterpart Payment, the Global Fund will use all reasonable endeavours to notify and consult with the Creditor and the Borrower as soon as reasonably practicable, to seek mutual agreement on alternative allocations: firstly within the Borrower's other activities on the Global Fund's register of unfunded quality demand, in accordance with Clause 3.6.1, secondly on a notional basis to the Global Fund's other grant programs for the Borrower in accordance with Clause 3.6.2, and, should such alternative allocations not be possible or advisable, thereafter on an unrestricted basis through the general pool of funding, to other programs within the Global Fund's grant portfolio, respectively, having regard to the policies and priorities of the Creditor and the Global Fund, in accordance with Clause 3.6.3. The Global Fund agrees that no alternative allocation will be made prior to notification and consultation with the Creditor and the Borrower.

- 3.8 The Creditor, or any other person authorized by the Creditor, will be entitled to visit programs funded by the Counterpart Payment. The Creditor will provide the Global Fund with reasonable notice prior to any visit. The Global Fund will provide the Creditor, or any other person authorized by the Creditor, with the necessary assistance during their visit; and provide such additional written information as requested by the Creditor in relation to the concerned Global Fund program.

Clause 4

Non-Payment

- 4.1 The Creditor may suspend application of this Agreement if the Borrower fails to pay the Counterpart Payment, in whole or in part, on or before the date specified in clause 2.1 and in Annex 1, and the non-payment has not been resolved within six months. In such event, the amount envisioned for cancellation under this Agreement will bear full or proportionate interest and will be repaid pursuant to the Loan Agreements, including the repayment schedule specified in the applicable Loan Agreement(s), to the extent cancellation has not taken effect under this Agreement.
- 4.2 Any suspension of this Agreement as described in Clause 4.1 will not give rise to an obligation of the Global Fund to return any amount received from the Borrower. For the avoidance of doubt, the parties agree that the Global Fund will be the owner of any amounts it receives from the Borrower and will be under no obligation to repay any such amounts it receives.

Clause 5

Representations, Ratification and Correspondence

- 5.1 This Agreement has been duly executed and delivered by all of the parties and is enforceable in accordance with its terms. Each party has all the necessary power, authority and legal capacity to enter into this Agreement.

- 5.2 This Agreement shall enter into force upon ratification by the Creditor and the Borrower pursuant to their respective internal procedures, such date of ratification to be notified to all parties in accordance with Clause 5.3 herein.
- 5.3 Notices or other communications in connection with this Agreement will be in writing and delivered as an original document or electronically. The addresses for delivery of notices or other communications are as follows:

For the Creditor: Subdirección General de Economía y Financiación
Internacional
Dirección General del Tesoro
Secretaría General del Tesoro y Política Financiera
Ministerio de Economía y Competitividad
Paseo de la Castellana 162
28046 Madrid, Spain
Tel. +34 91 6038206
Fax: +34 91 6037068
Email: sgefi@tesoro.mineco.es

For the Borrower: SEM Henri Yav Mulang
Immeuble du Ministère des Finances
Boulevard du 30 juin n°2008
Commune de la Gombe - Kinshasa.
République Démocratique du Congo
Tel. +243 818 938 760
Email: cabfinances@minfinrdc.com

For The Global Fund: Debt2Health
The Global Fund to Fight AIDS, Tuberculosis and Malaria
Chemin du Blandonnet, 8
1214 – Vernier
Geneva – Switzerland
Tel: +41 (0) 58 791 1384
Fax: + 41 (0) 58 791 1701
E-mail: Debt2Health@theglobalfund.org

Clause 6

Miscellaneous Provisions

- 6.1 The provisions of the Loan Agreements will remain unaffected unless they conflict with the provisions of this Agreement. Any and all existing payment obligations exceeding the Counterpart Payment and any and all future payment obligations that are outside the scope of this Agreement will be performed by the Borrower in

accordance with the provisions of the relevant loan agreements between the Creditor and Borrower.

- 6.2 If any provision of this Agreement is invalid or unenforceable, the validity and enforceability of the other provisions of this Agreement will not be affected. Any provision of this Agreement found to be invalid or unenforceable or any unintentional defect or gap will be replaced with a provision consistent with the purpose of this Agreement.
- 6.3 The Creditor's right to bring a claim under this Agreement will expire after five (5) years from the end of the year in which (a) any such claim has arisen or (b) the date upon which the Creditor should have become aware of the claim.
- 6.4 Nothing in or related to this Agreement may be construed as a waiver, express or implied, of the privileges and immunities accorded to the Global Fund under international or national law.
- 6.5 In case of any doubt as to the interpretation of this Agreement, the English language text will prevail for the construction of this Agreement.
- 6.6 Any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules as at present in force. The parties 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 will be the International Chamber of Commerce International Court of Arbitration. The number of arbitrators will be three. The place of arbitration will be Geneva, Switzerland. The language to be used in the arbitral proceedings will be English.

This Agreement is done in three originals in English and three originals in French.

CONFIRMED AND AGREED:

For and on behalf of THE KINGDOM OF SPAIN



Irene Garrido Valenzuela
Secretary of State for Economic
and Business Affairs

Date May 10th 2017

For and on behalf of THE DEMOCRATIC REPUBLIC OF THE CONGO



SEM Henri Yav Mulang
Minister of Finance

Date 26 OCT 2017

For and on behalf of THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND
MALARIA



Christoph Benn
Director, External Relations Division

Date 6 June 2017

Annexes

The following document will form, be read and construed as an integral part of this Agreement:

Annex 1: Contribution Agreement

Date: 26 OCT 2017

SEM Henri Yav Mulang
Immeuble du Ministère des Finances
Boulevard du 30 juin n°2008
Commune de la Gombe - Kinshasa
Democratic Republic of the Congo

***Contribution Agreement between the Democratic Republic of the Congo
and the Global Fund to Fight AIDS, Tuberculosis and Malaria***

SEM Henri Yav Mulang:

We are pleased to acknowledge on behalf of the Global Fund to Fight AIDS, Tuberculosis and Malaria (the “Global Fund”) that the Democratic Republic of the Congo (the “Donor”) has decided to contribute the amounts set forth in this agreement (the “Contribution”) to finance the activities of the Global Fund, pursuant to the trilateral Debt Swap Agreement among the Kingdom of Spain, the Donor and the Global Fund, under which the Kingdom of Spain has agreed to release the Donor from its obligation to pay principal and interest due under certain loan agreements in the total amount of eight million two hundred seventy-four thousand nine hundred fifty-seven United States Dollars and fourteen cents (USD 8,274,957.14) subject to the satisfaction by the Donor of certain conditions, including fulfillment of the contribution set forth in this agreement.

The Donor will transfer the Contribution in cash to the Global Fund by no later than the Counterpart Payment Date as defined in the above-referenced trilateral Debt Swap Agreement, as set forth below:

- USD 3,159,549.20
Payable by the Donor or such agent as the Donor may so designate

To the following bank account:

Account holder: The Global Fund to Fight AIDS, Tuberculosis and Malaria

Bank name: Credit Suisse AG

Country: Switzerland

Account currency: USD

IBAN: CH8504835060802942003

SWIFT: CRESCHZZ80A

- EUR 217,423.28
Payable by *Instituto de Credito Oficial*, Kingdom of Spain, on behalf of the Donor

To the following bank account:

Account holder: The Global Fund to Fight AIDS, Tuberculosis and Malaria

Bank name: Credit Suisse AG

Country: Switzerland

Account currency: EUR

IBAN: CH5804835060802942004

SWIFT: CRESCHZZ80A

The Donor agrees that the Contribution may be held and administered in accordance with the Global Fund's financial management policies and procedures approved by its Board or Committees. Any interest or other income generated by the Contribution, including currency conversion gains, may be utilized at the discretion of the Global Fund, pursuant to its duly established policies and procedures.

The Global Fund will provide the Donor with reports concerning its activities, achievements and the effectiveness of its activities. The Global Fund financial statements relating thereto will be provided to the Donor. Furthermore, the Global Fund will, upon request, provide the Donor with additional reporting concerning the utilization of the overall pool of contributions received by the Global Fund.

This letter shall, upon the Donor's confirmation in the manner indicated below, constitute an agreement among the Donor and the Global Fund effective as of the date first above written.

Sincerely,

THE GLOBAL FUND TO FIGHT AIDS, TUBERCULOSIS AND MALARIA



Christoph Benn
Director, External Relations Division

Date 6 June 2017

CONFIRMED AND AGREED:

For and on behalf of THE DEMOCRATIC REPUBLIC OF THE CONGO



SEM Henri Yav Mulang
Minister of Finance

Date 28 Dec 2017