**D e b t S w a p A g r e e m e n t**

dated……………

between

**KfW, Frankfurt am Main**

(“KfW”)

and

**the Republic of El Salvador**

represented by the Ministry of Finance

(“Borrower”)

and

**The Global Fund to Fight AIDS,** **Tuberculosis** **and Malaria, Geneva**

(the “Global Fund”)

for
EUR 10.000.000,00

**Debt2Health Swap for**

**“Strengthening the National Reference Laboratory”
(“Project”)**

WHEREAS, the Global Fund was established in 2002 as an innovative financing institution for the purpose of attracting and managing financial resources globally as well as providing such resources to countries to support national and regional programs that prevent, treat and care for people with the diseases of HIV/AIDS, tuberculosis and/or malaria; and

WHEREAS, KfW and the Borrower, having entered into certain loan agreements as listed in Annex 1 hereto (the “Underlying Agreements”), and are committed to using the Debt2Health mechanism as an instrument to provide additional and complementary funding to a grant program approved by the Board of the Global Fund.

NOW, THEREFORE, on the basis of the verbal notes dated 18 January 2017 and 2 February 2017 between the Government of the Federal Republic of Germany and the Government of the Republic of El Salvador on Financial Cooperation (“Government Agreement”), the Borrower, the Global Fund and KfW have agreed to enter into the following Debt Swap Agreement.

**Article 1**

Debt Release

* 1. Under the terms of this Agreement, KfW shall release the Borrower from the payment of redemption instalments and interest payments due under the Underlying Agreements to this Debt Swap Agreement up to the amount of EUR 10.000.000,00 (“Debt Swap Amount”).
	2. The obligation to pay interest on the Debt Swap Amount will be suspended as of the date of signature of this Agreement. It will be cancelled finally as of the same date to the extent that the cancellation of corresponding debt amounts has been confirmed in accordance with the provisions of Section 1.3 of this article.
	3. The cancellation of the part of the Debt Swap Amount that relates to each respective Counterpart Payment as defined and made in accordance with Section 2.1 will enter into force as soon as KfW declares such cancellation in writing vis-à-vis the Borrower. KfW will declare said cancellation only if
		1. the Global Fund has provided evidence acceptable to KfW of the disbursement by the Borrower to the Global Fund of such Counterpart Payment and of the use of an equivalent amount of funds for the Project (as defined in Section 3.1) in accordance with Section 3.2. Such evidence shall be provided in accordance with the procedure referred to in Sections 2.3 and 3.5 ; and if
		2. the Government of the Federal Republic of Germany has given its consent to the cancellation.

Together with the declaration mentioned above KfW will send to the Borrower a confirmation of the exact amount cancelled and a correspondingly revised repayment schedule to the Underlying Agreements. For information purposes only, KfW shall send a copy of such declaration to the Global Fund.

* 1. Amounts due for cancellation under the terms of this Agreement shall be proportionally set off against all payment instalments under the Underlying Agreements, unless KfW at its own discretion determines a different method of set-off.

Article 2

Obligations of the Borrower and the Global Fund

* 1. Drawing on its budgetary resources, the Borrower shall make all payments as set out in Annex 1 (the “Counterpart Payments”) to the account of the Global Fund, in accordance with the Contribution Agreement attached as Annex 2, to be effective between the Borrower and the Global Fund as of the effective date of this Agreement. Any interest or other income accrued on the Counterpart Payments subsequent to their transfer by the Borrower shall be assigned to the general pool of funds of the Global Fund.
	2. The Borrower and the Global Fund shall keep records of the Counterpart Payments in accordance with their respective policies and procedures. Such records will be retained by the Borrower and the Global Fund for inspection for a period of at least five (5) years after the cancellation of the entire Debt Swap Amount (as such term is defined in Section 1.1) in accordance with the process described in Section 1.3.
	3. Following the receipt of each Counterpart Payment from the Borrower by the Global Fund and in any case no later than 12 weeks after the receipt of any such payment, the Global Fund and, if requested by KfW, the Borrower, shall provide evidence satisfactory to KfW confirming payment and receipt of such Counterpart Payment. Evidence satisfactory shall be supplied to KfW in the form of written notification from the Chief Financial Officer of the Global Fund to KfW confirming receipt of the payment.
	4. Payments in currencies other than EUR shall be valued in EUR at the exchange rate as quoted by the European Central Bank on the day of transfer of the funds.
	5. The Global Fund’s grant agreement signed with the government of El Salvador is subject to oversight. The assurance mechanism includes an annual audit by an independent auditor, as well as risk-based audits by the independent Office of the Inspector General of the Global Fund. In addition, the grant program is subject to ongoing monitoring, verification and reporting throughout the implementation period by independent Local Fund Agents which operate in-country. The Global Fund shall provide KfW these annual audits. In addition, KfW will have the right to conduct its own audits of the Project.
	6. The Global Fund shall provide KfW and El Salvador with an audited certified financial statement of the Global Fund within four weeks of issue of such statement.

**Article 3**

The Project

* 1. The Borrower shall disburse the amounts in accordance with Section 2.1, to be used for “Strengthening the National Reference Laboratory” (the “Project”) which aims to improve the capacities of the Ministry of Health of the Borrower in the sector of laboratory analysis.
	2. The implementation of the Project and the utilization of the funds shall be in line with the respective Project proposal as enclosed in Annex 3.
	3. The generally applicable procedures and policies of the Global Fund, as amended from time to time, shall apply to the management of the Project. The parties acknowledge that the disbursements by the Global Fund to fund the Project are subject to the approval by the Global Fund Board and the subsequent inclusion of such Project under one or more Global Fund grant agreement(s) between the Global Fund and the Borrower. The Project will be subject to the Global Fund’s policies and procedures on financial and programmatic reporting and monitoring, as well as any other terms and conditions set forth in the relevant grant agreement(s). No provision in this Agreement will be construed as providing KfW 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.
	4. In the event that either the Borrower (in accordance with the relevant grant agreement(s) between the Global Fund and the Borrower) or the Global Fund determines it is not possible or advisable to use the Counterpart Payments to finance the Project, the Borrower or the Global Fund shall (i) provide written notification to KfW of the reason therefor, whether due to decision of the Borrower in consultation with the Country Coordinating Mechanism for El Salvador and the Global Fund or the suspension, termination or other action by the Global Fund in relation to a grant program, and (ii) request KfW’s approval of one or more alternative use(s). Following receipt of approval from KfW, the Borrower shall submit a request to re-allocate Counterpart Payments to the Global Fund where required by Global Fund policies and procedures.
	5. For each calendar year until the activities funded by the Counterpart Payments are completed, the Global Fund shall provide KfW with an annual report for the calendar year ending 31 December of that respective year on the progress of the relevant Global Fund grant programs including the Project. This annual report shall include the amount of the payments allocated to the Project (as approved by the Global Fund Board and incorporated under grant agreement(s) and the performance of the relevant grants against the performance indicators specified in the relevant grant agreement(s), as reviewed by an independent advisor engaged by the Global Fund to monitor, verify and report on grant performance (the “Local Fund Agent”). The annual report shall provide information on the progress of the Project and the use of funds under this Agreement, including the exchange rate used for any Counterpart Payments received or funds disbursed for the Project in a currency other than Euro. The annual reports shall be submitted no later than three months after the end of each corresponding calendar year.
	6. The costs associated with engagement of the Local Fund Agent or any other administrative costs of the Global Fund shall not be paid out of the Counterpart Payments made by the Borrower to the Global Fund.
	7. KfW, or any person authorized by KfW, will be entitled to visit and examine the Project at any reasonable time. KfW will inform the Borrower in reasonable time about such person or mission to visit the Project. The Borrower and the Global Fund will assist KfW, or any person authorized by KfW, in this; the Borrower and the Global Fund will supply in writing all additional information requested by KfW on the Project.
1. **Article 4**
2. Compliance
	1. The Borrower shall ensure and the Global Fund shall take all adequate measures by themselves and for third parties employed under the Project that the persons charged with the preparation and implementation of the Project, with the award of any contract for the supplies and services to be financed, and with requesting disbursements of payments, do not demand, assume, render, grant, promise or obtain a promise of unlawful payments or other advantages in connection with these tasks.
	2. The Borrower and the Global Fund shall make available to KfW on demand without undue delay all information and documents which KfW requires to fulfil its legal obligations to prevent money laundering, fraud, corruption and terrorism financing as well as for the continuous monitoring of the business relationship with the Global Fund, which is necessary for this purpose.
	3. Each of the Borrower and the Global Fund shall inform KfW promptly and of its own accord, as soon as it becomes aware of, or suspects any act of money laundering or/and terrorism financing, fraud or corruption by the Borrower or the Global Fund, any member of its management bodies or other governing bodies or any employee related to the Project. The Global Fund shall inform KfW of the matters under this paragraph after due enquiry and fully cooperate with KfW and its agents, in determining whether such compliance incident has occurred.
	4. In entering into and implementing this Agreement the Global Fund acts in its own name and for its own account. With regard to German law or the law of the country of formation of the Global Fund:
3. the Borrower’s and Global Fund’s own resources or the respective amounts invested in the financing of the Project will not be of illicit origins and, in particular, will not be linked to drug trafficking, fraud and corruption, organised criminal activity or terrorism;
4. the Global Fund will make all necessary efforts to be not engaged in the acquisition, possession or use of property that is of illicit origins and, in particular, this list being non-exhaustive, will not at any time be related to drug trafficking, corruption, organised crime or terrorism; and
5. the Global Fund will make all necessary efforts to be not engaged in financing terrorism.
	1. Each of the Borrower and the Global Fund will take all adequate measures to ensure that that the persons charged with the preparation and implementation of the Project, do not maintain any business relationship or have not engaged in any other activity:
6. with or in favor of persons, organizations or entities which are listed on a sanctions list issued by the United Nations Security Council, the European Union or the Federal Republic of Germany (“Sanctions Lists”), or
7. which would constitute a breach of embargoes regulating foreign trade or of so-called financial sanctions issued by the aforementioned institutions (together “Sanctions”).
	1. The Borrower and the Global Fund will not enter into any transactions, continue any relationship or engage in any other activities in relation to the Project that would constitute a breach of Sanctions.
	2. The Global Fund will inform KfW, promptly and of its own accord, of the occurrence of any event related to the Project which results in the Global Fund, any member of its management bodies or other governing bodies or any of its shareholders, being listed on a Sanctions List.

**Article 5**

Prepayment

* 1. KfW may demand immediate or expedited repayment of the outstanding Debt Swap Amount from the Borrower - if and to the extent said outstanding Debt Swap Amount is already due according to the Underlying Agreements - as well as payment of all interest accrued and any and all other incidental charges if
1. the Borrower has failed to perform its obligations towards KfW to effect payment when due,
2. obligations under this Agreement have been violated,
3. if it becomes unlawful for KfW to perform any of its obligations as contemplated by this Agreement or to fund or maintain the Underlying Agreements,
4. the Borrower or the Global Fund are unable to prove that the respective Counterpart Payments disbursed by the Borrower to the Global Fund or the respective equivalent amounts disbursed by the Global Fund for the Project have been used for the stipulated purpose,

and if the circumstances specified under a) to d) inclusively have not been eliminated within a period to be determined by KfW, which shall, however, be at least 30 days.

* 1. In case of the application of Section 5.1 the suspension of the obligation to pay interest pursuant to Section 1.2 shall be repealed retroactively and all Debt Swap Amounts shall bear full or proportionate interest and shall be repaid pursuant to the Underlying Agreements, either in full or proportionately as the case may be, in so far as the cancellation pursuant to Section 1.3 has not taken effect. For the avoidance of doubt, this stipulation shall not impose an obligation on the Borrower to pay default interest or lump sum damages on the Debt Swap Amount from the date of the signature of this Agreement to the date when KfW may claim the repayment of the Debt Swap Amount from the Borrower due to a breach of the contractual obligations under Section 5.1.
	2. Any suspension of this Agreement as described in Section 5.1 shall not give rise to an obligation of the Global Fund to return any amount received from the Borrower to KfW. For the avoidance of doubt, the parties agree that the Global Fund shall be the owner of any amounts it receives from the Borrower and shall be under no obligation to repay any such amounts it receives to KfW. However, in the event that the Project will not be implemented in whole or partially, the Global Fund shall transfer such Counterpart Payments that have been received by the Global Fund in accordance with Section 2.1, but which cannot be credited for the implementation of the Project or credited to the Global Fund on account of funds advanced by or on behalf of the Global Fund and invested in the Project in reliance on the expected receipt of such Counterpart Payments, back to the Borrower.
1. **Article 6**

Validity of this Agreement and Representation

* 1. The Minister of Finance of the Borrower and such persons as designated by him or her to KfW and authorized by specimen signatures authenticated by him or her shall represent the Borrower in the execution of this Agreement. The power of representation shall not expire until its express revocation by the representative of the Borrower authorized at the time has been received by KfW.
	2. The Director of the External Relations Division of the Global Fund shall represent the Global Fund in the execution of this Agreement.
	3. Amendments or addenda to this Agreement and any notices and statements delivered by the contracting parties under this Agreement shall be in writing. Any such notice or statement shall have been received once it has arrived at the following address of the corresponding contracting party or at such other address of the corresponding contracting party as notified to the other contracting party:

For KfW: KfW
Postfach 11 11 41
60046 Frankfurt am Main
Federal Republic of Germany
Fax: +49 69 7431‑2944

For the Borrower: Ministry of Finance
Boulevard de los Héroes No. 1231
Edificio Ministerio de Hacienda
San Salvador
El Salvador, C.A
Fax: +503-22257491

 For the Global Fund: Debt2Health
 The Global Fund to Fight AIDS, Tuberculosis and

 Malaria

 Chemin du Pommier, 40

 1218 Le Grand-Saconnex, Geneva

 Switzerland

 Tel: +41 (0) 58 791 1384

 Fax: + 41 (0) 58 791 1701

**Article 7**

Publication and transfer of project-related information

7.1 To comply with internationally accepted principles of utmost transparency and efficiency in the development cooperation, KfW publishes selected information (including evaluation reports) about the Debt Swap and the Project and how it is financed during pre-contractual negotiations, while the Project-related agreement(s) is (are) being implemented and in the post-contractual stage (hereinafter referred to as the “Entire Period”). The publication and transfer of Project-related information by KfW pursuant to this Article 7 shall not impose any obligations upon the Global Fund or the Borrower. Article 3.7 remains unaffected.

 The information is published regularly on KfW´s website for its business area “KfW Development Bank” (<http://transparenz.kfw-entwicklungsbank.de>).

 The publication of information (either by KfW or third parties in accordance with Article 7.3 below) about the Debt Swap and the Project and how it is financed does not include any contractual documentation or any sensitive financial or business-related detailed information about the parties involved in the Debt Swap and the Project or its financing, such as

1. Information about internal financial data;
2. business strategies;
3. internal corporate guidelines and reports;
4. personal data of natural persons;
5. KfW’s internal rating of the parties financial position.

7.2 KfW shares selected information about the Debt Swap and the Project and how it is financed during the Entire Period with the entities mentioned below, particularly to ensure transparency and efficiency:

1. subsidiaries of KfW;
2. the Federal Republic of Germany and its competent bodies, authorities, institutions, agencies or entities;
3. other implementing organisations involved in German bilateral development cooperation, particularly the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH;
4. international organisations involved in collecting statistical data and their members, especially the Organisation for Economic Cooperation and Development (OECD) and its members.

7.3 Furthermore, the Federal Republic of Germany has requested, KfW to share selected information about the Debt Swap and the Project and how it is financed throughout the Entire Period with the following entities, which publish the sections relevant to the purpose:

1. Federal Republic of Germany for the purposes of the International Aid Transparency Initiative (<http://www.bmz.de/de/was_wir_machen/wege/transparenz-fuer-mehr-Wirksamkeit/index.html>);
2. Germany Trade & Invest (GTAI) for the purposes of market information (<http://www.gtai.de/GTAI/Navigation/DE/trade.FOO>);
3. OECD for the purpose of reporting financial flows in the framework of development cooperation (<http://stats.oecd.org/>);
4. German Institute for Development Evaluation (DEval) for the purposes of evaluating the overall German development cooperation to ensure transparency and efficiency (<http://www.deval.org/de/>).

7.4 KfW further reserves the right to transfer (including for the purposes of publication) information about the Debt Swap and the Project and how it is financed during the Entire Period to other third parties so as to safeguard legitimate interests.

 The information is not transferred by KfW to other third parties if the legitimate interests of the Borrower and/or the Global Fund in the information not being transferred outweigh KfW's interests in it being transferred. The legitimate interests of the Borrower and/or the Global Fund particularly include the confidentiality of the sensitive information mentioned in Article 6.1, which is excluded from publication.

 Furthermore, KfW is entitled to transfer information to third parties if this is necessary due to statutory or regulatory requirements or to assert or defend claims or other legal rights in court or administrative proceedings.

**Article 8**

Miscellaneous Provisions

8.1 The provisions of the Underlying Agreements shall remain unaffected hereby unless they conflict with the provisions of this Debt Swap Agreement. Any and all existing payment obligations exceeding the Debt Swap Amount and any and all future payment obligations shall be performed by the Borrower in accordance with the provisions of said agreements.

8.2 If any of the provisions of this Agreement is invalid, all other provisions shall remain unaffected thereby. Any gap resulting from any invalid provisions shall be filled by a provision consistent with the purpose of this Agreement.

8.3 All claims of KfW under this Agreement expire after five years from the end of the year in which any such claim has accrued and in which KfW has become aware of the circumstances constituting such claim or could have become aware of them without gross negligence.

8.4 The provisions of the Underlying Agreements with respect to the governing law and the place of performance shall remain unaffected and shall also apply to this Agreement.

8.5 KfW, the Borrower and Global Fund shall, to the extent possible, strive to resolve and settle promptly and amicably questions of interpretation and application of this Agreement and any disputes, controversies or claims arising out of or relating to the Agreement.

8.6 All remaining disputes arising out of or in connection with the present Agreement shall be settled exclusively and finally by an arbitration tribunal. In this regard, the following will apply:

#### The arbitration tribunal will consist of one or three arbitrators who will be appointed and will act in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules applicable from time to time.

b) The arbitration proceedings will be conducted in Frankfurt am Main. The proceedings will be held in the English language.

8.7 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 (a) international law, including international customary law, any international conventions, treaties or agreements, (b) any national laws, including, but not limited to, the United States of America’s International Organizations Immunities Act (22 United States Code 288), or (c) under the Headquarters Agreement between the Global Fund and the Swiss Federal Council dated 13 December 2004. Nevertheless the obligations under this Debt Swap Agreement shall be binding on the Global Fund.

Done in 3 originals in the English language.

Read and agreed:

Frankfurt am Main, …………………

KfW

San Salvador, …………………….

Republic of El Salvador,

Ministry of Finance

Geneva, …………………..

The Global Fund

Annexes

The following documents shall form, be read and construed as integral parts of this Agreement:

|  |  |
| --- | --- |
| **Annex 1:** | Payment Schedule based on Underlying Agreements |
| **Annex 2:** | Contribution Agreement between the Borrower and the Global Fund |
| **Annex 3:** | Proposal for the Project “Strengthening the National Reference Laboratory” |