

## GENERAL CONDITIONS OF CONTRACT

### CONTRACTS FOR THE PROVISION OF GOODS

1. **LEGAL STATUS OF THE PARTIES:** The United Nations Office of the High Commissioner for Refugees (“UNHCR”) and the Contractor shall also each be referred to as a “Party” hereunder, and:
  - 1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, UNHCR, as a subsidiary organ of the United Nations, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
  - 1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* UNHCR, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
2. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to UNHCR in connection with the performance of its obligations under the Contract. Should any authority external to UNHCR seek to impose any instructions concerning or restrictions on the Contractor’s performance under the Contract, the Contractor shall promptly notify UNHCR in writing and provide all reasonable assistance required by UNHCR. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNHCR, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNHCR.
3. **ASSIGNMENT:**
  - 3.1 Except as provided in Article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNHCR. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNHCR. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under the Contract, except with the prior written consent of UNHCR. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNHCR.
  - 3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor’s operations, *provided that*:
    - 3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*,
    - 3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor’s assets or ownership interests; *and*,
    - 3.2.3 the Contractor promptly notifies UNHCR about such assignment or transfer at the earliest opportunity; *and*,
    - 3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to UNHCR following the assignment or transfer.
4. **SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNHCR. UNHCR shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNHCR reasonably considers is not qualified to perform obligations under the Contract. UNHCR shall have the right to require any subcontractor’s removal from UNHCR premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any

subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

5. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee, or other agent of UNHCR. The Contractor acknowledges and agrees that any breach of this provision is a breach of an essential term of the Contract.
6. **PURCHASE OF GOODS:** The following conditions shall apply:
  - 6.1 **DELIVERY OF GOODS:** The Contractor shall hand over or make available the goods, and UNHCR shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to UNHCR such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to UNHCR in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by UNHCR.
  - 6.2 **INSPECTION OF THE GOODS:** If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify UNHCR when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNHCR or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNHCR or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.
  - 6.3 **PACKAGING OF THE GOODS:** The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by UNHCR as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.
  - 6.4 **TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that UNHCR receives all necessary transport documents in a timely manner so as to enable UNHCR to take delivery of the goods in accordance with the requirements of the Contract.
  - 6.5 **WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNHCR stated in or arising under the Contract, the Contractor warrants and represents that:
    - 6.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;
    - 6.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide UNHCR with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
    - 6.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

- 6.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;
- 6.5.5 The goods are new and unused;
- 6.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by UNHCR in accordance with the Contract;
- 6.5.7 During any period in which the Contractor's warranties are effective, upon notice by UNHCR that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse UNHCR for the purchase price paid for the defective goods; and,
- 6.5.8 The Contractor shall remain responsive to the needs of UNHCR for any services that may be required in connection with any of the Contractor's warranties under the Contract.
- 6.6 ACCEPTANCE OF GOODS:** Under no circumstances shall UNHCR be required to accept any goods that do not conform to the specifications or requirements of the Contract. UNHCR may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNHCR be obligated to accept any goods unless and until UNHCR has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that UNHCR shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until UNHCR in fact provides such written acceptance. In no case shall payment by UNHCR in and of itself constitute acceptance of the goods.
- 6.7 REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to UNHCR under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNHCR, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from UNHCR of such rejection or refusal to accept the goods, the Contractor shall, in sole option of UNHCR:
- 6.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by UNHCR; *or*,
- 6.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; *or*,
- 6.7.3 replace the goods with goods of equal or better quality; *and*,
- 6.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to UNHCR.
- 6.8 In the event that UNHCR elects to return any of the goods for the reasons specified in Article 6.7, above, UNHCR may procure the goods from another source. In addition to any other rights or remedies available to UNHCR under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and UNHCR shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.
- 6.9 TITLE:** The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to UNHCR upon delivery of the goods and their acceptance by UNHCR in accordance with the requirements of the Contract.
- 6.10 EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNHCR under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNHCR, UNHCR shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any

Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly inform UNHCR in writing and consult with UNHCR to enable UNHCR to take appropriate measures to resolve the matter.

## **7. INDEMNIFICATION:**

7.1 The Contractor shall indemnify, defend, and hold and save harmless, UNHCR, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against UNHCR, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

7.1.1 allegations or claims that the possession of or use by UNHCR of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNHCR under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

7.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

7.2 The indemnity set forth in Article 7.1.1, above, shall not apply to:

7.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNHCR directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; *or*

7.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if UNHCR or another party acting under the direction of UNHCR made such changes.

7.3 In addition to the indemnity obligations set forth in this Article 7, the Contractor shall be obligated, at its sole expense, to defend UNHCR and its officials, agents and employees, pursuant to this Article 7, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

7.4 UNHCR shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of UNHCR or any matter relating thereto, which only UNHCR itself is authorized to assert and maintain. UNHCR shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

7.5 In the event the use by UNHCR of any goods, property or services provided or licensed to UNHCR by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

7.5.1 procure for UNHCR the unrestricted right to continue using such goods or services provided to UNHCR;

7.5.2 replace or modify the goods or services provided to UNHCR, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,

7.5.3 refund to UNHCR the full price paid by UNHCR for the right to have or use such goods, property or services, or part thereof.

## 8. INSURANCE AND LIABILITY:

- 8.1 The Contractor shall pay UNHCR promptly for all loss, destruction, or damage to the property of UNHCR caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- 8.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
  - 8.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
  - 8.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
  - 8.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,
  - 8.2.4 such other insurance as may be agreed upon in writing between UNHCR and the Contractor.
- 8.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.
- 8.4 The Contractor acknowledges and agrees that UNHCR accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.
- 8.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNHCR, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
  - 8.5.1 name UNHCR as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
  - 8.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNHCR;
  - 8.5.3 provide that UNHCR shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,
  - 8.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNHCR.
- 8.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 8.7 Except for any self-insurance program maintained by the Contractor and approved by UNHCR for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNHCR. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNHCR with evidence, in the form of certificate of insurance or such other form as UNHCR may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNHCR reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 8.5.3, above, the Contractor shall



promptly notify UNHCR concerning any cancellation or material change of insurance coverage required under the Contract.

8.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

9. **ENCUMBRANCES AND LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with the United Nations against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNHCR.

10. **EQUIPMENT FURNISHED BY UNHCR TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by UNHCR to the Contractor for the performance of any obligations under the Contract shall rest with UNHCR, and any such equipment shall be returned to UNHCR at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to UNHCR, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate UNHCR for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

11. **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

11.1 Except as is otherwise expressly provided in writing in the Contract, UNHCR shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for UNHCR under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNHCR.

11.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, UNHCR does not and shall not claim any ownership interest thereto, and the Contractor grants to UNHCR a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

11.3 At the request of UNHCR, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNHCR in compliance with the requirements of the applicable law and of the Contract.

11.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of UNHCR, shall be made available for use or inspection by UNHCR at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNHCR authorized officials on completion of work under the Contract.

12. **PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS OR OF UNHCR:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the United Nations or UNHCR, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations or of UNHCR, or any abbreviation of the name of the United Nations or of UNHCR in connection with its business or otherwise without the written permission of UNHCR.

13. **CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information")<sup>1</sup>, shall be held in

<sup>1</sup> Information and data that is considered by UNHCR as proprietary and confidential includes, but is not limited to, data pertaining to refugees and persons of concern to UNHCR.

confidence by that Party and shall be handled as follows:

13.1 The recipient (“Recipient”) of such Information shall:

13.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; *and*,

13.1.2 use the Discloser’s Information solely for the purpose for which it was disclosed.

13.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 13, the Recipient may disclose Information to:

13.2.1 any other party with the Discloser’s prior written consent; *and*,

13.2.2 the Recipient’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, *provided that*, for these purposes a controlled legal entity means:

13.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; *or*,

13.2.2.2 any entity over which the Party exercises effective managerial control; *or*,

13.2.2.3 for UNHCR, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

13.3 The Contractor may disclose Information to the extent required by law, *provided that*, subject to and without any waiver of the privileges and immunities of UNHCR, the Contractor will give UNHCR sufficient prior notice of a request for the disclosure of Information in order to allow UNHCR to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

13.4 UNHCR may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

13.5 The Recipient shall not be precluded from disclosing Information that is (i) obtained by the Recipient without restriction from a third party who is not in breach of any obligation as to confidentiality to the owner of such Information or any other person, or (ii) disclosed by the Discloser to a third party without any obligation of confidentiality, or (iii) previously known by the Recipient, or (iv) at any time is developed by the Recipient completely independently of any disclosures hereunder.

13.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

#### 14. **FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**

14.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

14.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNHCR shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 15, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNHCR shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

14.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which UNHCR is engaged in, preparing to engage in, or disengaging from any 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.

## 15. TERMINATION:

15.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 18 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

15.2 UNHCR may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of UNHCR applicable to the performance of the Contract or the funding of UNHCR applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, UNHCR may terminate the Contract without having to provide any justification therefor.

15.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been issued by UNHCR, the Contractor shall, except as may be directed by UNHCR in the notice of termination or otherwise in writing:

- 15.3.1 take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
- 15.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
- 15.3.3 place no further subcontracts or orders for materials, services, or facilities, except as UNHCR and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
- 15.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
- 15.3.5 transfer title and deliver to UNHCR the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
- 15.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to UNHCR thereunder;
- 15.3.7 complete performance of the work not terminated; *and*,
- 15.3.8 take any other action that may be necessary, or that UNHCR may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNHCR has or may be reasonably expected to acquire an interest.

15.4 In the event of any termination of the Contract, UNHCR shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the



Contract. In addition, UNHCR shall not be liable to pay the Contractor except for those goods delivered and services provided to UNHCR in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNHCR or prior to the Contractor's tendering of notice of termination to UNHCR.

15.5 UNHCR may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

- 15.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;
- 15.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;
- 15.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;
- 15.5.4 a receiver is appointed on account of the insolvency of the Contractor;
- 15.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,
- 15.5.6 UNHCR reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

15.6 Except as prohibited by law, the Contractor shall be bound to compensate UNHCR for all damages and costs, including, but not limited to, all costs incurred by UNHCR in any legal or non-legal proceedings, as a result of any of the events specified in Article 15.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNHCR of the occurrence of any of the events specified in Article 15.5, above, and shall provide UNHCR with any information pertinent thereto.

15.7 The provisions of this Article 15 are without prejudice to any other rights or remedies of UNHCR under the Contract or otherwise.

16. **NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

17. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, UNHCR shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNHCR shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

#### 18. **SETTLEMENT OF DISPUTES:**

18.1 **AMICABLE SETTLEMENT:** The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

18.2 **ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 18.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of

the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

19. **PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including its subsidiary organs or of UNHCR (as a subsidiary organ of the United Nations).

20. **TAX EXEMPTION:**

20.1 Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including UNHCR as one of its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of UNHCR from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNHCR to determine a mutually acceptable procedure.

20.2 The Contractor authorizes UNHCR to deduct from the Contractor’s invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNHCR before the payment thereof and UNHCR has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide UNHCR with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and UNHCR shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNHCR and paid by the Contractor under written protest.

21. **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to UNHCR, as such obligations are set forth in vendor registration procedures.

22. **MODIFICATIONS:**

22.1 The Director of the Division for Emergency and Supply Management, or such other contracting authority as UNHCR has made known to the Contractor in writing, possesses the authority to agree on behalf of UNHCR to any modification of or change in the Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in the Contract shall be valid and enforceable against UNHCR unless provided by a valid written amendment to the Contract signed by the Contractor and the Director of the Division for Emergency and Supply Management or such other contracting authority.

22.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 22.1, above.

22.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against UNHCR nor in any way shall constitute an agreement by UNHCR thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 22.1, above.

23. **AUDITS AND INVESTIGATIONS:**

23.1 Each invoice paid by UNHCR shall be subject to a post-payment audit by auditors, whether internal or external, of UNHCR or by other authorized and qualified agents of UNHCR at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. UNHCR shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by UNHCR other than in accordance with the terms and conditions of the Contract.

23.2 The Contractor acknowledges and agrees that, from time to time, UNHCR may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. The right of UNHCR to

conduct an investigation and the Contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNHCR access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNHCR hereunder.

#### 24. **LIMITATION ON ACTIONS:**

24.1 Except with respect to any indemnification obligations in Article 7, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 18.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

24.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

25. **CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 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. The Contractor 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 UNHCR to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

26. **MINES:** The Contractor warrants and represents that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any), is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines. The Contractor 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 UNHCR to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

#### 27. **SEXUAL EXPLOITATION:**

27.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor 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 Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person. The Contractor acknowledges and agrees that the provisions hereof constitute an essential term of the Contract and that any breach of these provisions shall entitle UNHCR to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

27.2 UNHCR shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor 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 Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

28. **EXPLOITATION AND ABUSE OF REFUGEES AND OTHER PERSONS OF CONCERN TO UNHCR:**  
The Contractor warrants that it has instructed its personnel to refrain from any conduct that would adversely reflect on UNHCR and/or the United Nations and from any activity which is incompatible with the aims and objectives of the United Nations or the mandate of UNHCR to ensure the protection of refugees and other persons of concern to UNHCR. The Contractor hereby undertakes all possible measures to prevent its personnel from exploiting and abusing refugees and other persons of concern to UNHCR. The failure of the Contractor to investigate allegations of exploitation and abuse against its personnel or related to its activities or to take corrective action when exploitation or abuse has occurred, shall entitle UNHCR to terminate the Contract immediately upon notice to the Contractor, at no cost to UNHCR.
29. **PAYMENT INSTRUCTIONS:** UNHCR shall, on the fulfillment of the delivery terms, unless otherwise provided in the Contract or purchase order, make payment by bank transfer within thirty days of receipt of the Contractor's invoice for the goods and copies of any other documentation specified in the Contract. Payment against the invoice referred to above will reflect any discount shown under the payment terms agreed among the parties, provided payment is made within the period required by such payment terms. The prices shown in the Contract or the purchase order may not be increased except by express written agreement of UNHCR. Documents are to be sent to the address indicated in the Contract or purchase order.

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# الشروط العامة للتعاقد

## عقود تزويد البضائع

1. المركز القانوني للطرفين: يُشار لكل من المفوضية السامية للأمم المتحدة لشؤون اللاجئين ("المفوضية") والمتعاقد فيما يلي "بالطرف" بمقتضى هذا العقد:

1.1 وعملاً، من جملة أمور أخرى، بميثاق الأمم المتحدة واتفاقية امتيازات الأمم المتحدة وحصاناتها، تُعدّ المفوضية، باعتبارها هيئة تابعة للأمم المتحدة، شخصية اعتبارية كاملة، وتتمتع بالامتيازات والحصانات اللازمة لتحقيق مقاصدها على نحو مستقل.

2.1 يتمتع المتعاقد بالمركز القانوني لمتعاقدين مستقلين تجاه المفوضية، ولا يجوز تأويل أي شيء مما يرد في العقد أو يتعلق به على أنه تأسيس أو إنشاء لعلاقة بين الطرفين على أنها علاقة ربّ عملٍ بموظف أو أصيل بوكيل. ولا يعتبر مسؤولو أحد الطرفين أو ممثلوه أو موظفوه، أو المتعاقدون معه من الباطن بأيّ حالٍ من الأحوال موظفين أو وكلاء للطرف الآخر، وعلى كل طرف أن يتحمل وحده المسؤولية عن كافة المطالبات الناشئة عن أو المتعلقة بالعمل مع هؤلاء الأشخاص أو الكيانات.

2. مصدر التعليمات: يجب على المتعاقد ألاّ يلتمس تعليمات أو يقبل بها من أي سلطة خارج المفوضية فيما يتعلق بتنفيذ التزاماته بموجب العقد. وفي حال سعت أي سلطة خارج المفوضية لفرض أية تعليمات أو قيود على ما ينفذه المتعاقد بموجب العقد، يتعين على المتعاقد أن يُخطر فوراً المفوضية خطياً وأن يقدم كل مساعدة ممكنة تطلبها المفوضية. ويجب على المتعاقد ألاّ يتخذ أي إجراء فيما يتعلق بتنفيذ التزاماته بموجب العقد قد يُؤثر سلباً على مصالح المفوضية، ويقوم المتعاقد بتنفيذ التزاماته بموجب العقد مع المراعاة الكاملة لمصالح المفوضية.

### 3. التنازل:

3.1 باستثناء ما هو منصوص عليه في البند (2.3) أدناه، لا يحقّ للمتعاقد التنازل عن العقد أو نقله أو رهنه أو التصرف به على نحو آخر إلا بتصريح خطّي مسبق من المفوضية، وينطبق هذا على أي جزء من العقد أو على أي من الحقوق أو المطالبات أو الالتزامات بموجب العقد. ولا يجوز أن يكون أي تنازل أو نقل أو رهن أو تصرف بطريقة أخرى من هذا القبيل غير مصرّح به، أو أي محاولة للقيام بذلك، مُلزماً للمفوضية. وباستثناء ما هو مصرّح به فيما يتعلق بأيّ متعاقد معتمد من الباطن، لا يحقّ للمتعاقد نقل التزاماته بموجب العقد إلا بموافقة خطيّة مسبقة من المفوضية. ولا يجوز أن يكون أي تفويض غير مصرّح به من هذا القبيل، أو المحاولة للقيام بذلك، مُلزماً للمفوضية.

3.2 يمكن للمتعاقد التنازل عن العقد أو نقله إلى كيان نجم عن إعادة هيكلة عمليات المتعاقد، شريطة الآتي:

1.2.3 ألا تكون إعادة الهيكلة تلك ناجمة عن إفلاس، أو الحراسة القضائية أو الإجراءات الأخرى المشابهة؛

2.2.3 بل ناجمة عن بيع أو دمج أو استحواذ كافة أصول المتعاقد أو على جزء كبير منها أو على حصصه في

الملكية؛

3.2.3 وأن يُخطر المتعاقد المفوضية فوراً عن هذا التنازل أو النقل في أقرب فرصة ممكنة؛



4.2.3 وأن يوافق المُتَنازل له أو المنقول له خطياً على الالتزام بكافة بنود العقد وأحكامه، وأن تقدم الموافقة الخطية إلى المفوضية فوراً بعد التنازل أو النقل.

**4. التعاقد من الباطن:** في حال احتاج المتعاقد خدمات متعاقدين من الباطن لتنفيذ أي من الالتزامات بموجب العقد، يجب على المتعاقد الحصول على موافقة خطية مسبقة من المفوضية. وبحق للمفوضية، وفقاً لتقديرها المنفرد، استعراض مؤهلات أي متعاقد من الباطن ورفض أي متعاقد من الباطن مقترح تعنتره المفوضية لأسباب موضوعية غير مؤهل لتنفيذ الالتزامات المنصوص عليها في العقد. كما يحق للمفوضية طلب إبعاد أي متعاقد من الباطن من مقرها دون الحاجة إلى إعطاء أي مسوغ لذلك. وهذا الرفض أو طلب الإبعاد، بحد ذاته، لا يمنح المتعاقد الحق بادعاء حصول تأخير بتنفيذ أي من التزاماته بموجب العقد أو بالتقدم بأي أضرار لعدم تنفيذها، ويتحمل المتعاقد حصرياً المسؤولية عن كافة الخدمات والالتزامات المنفذة ممن تعاقد معهم من الباطن. وتخضع بنود العقود من الباطن لكافة أحكام وشروط العقد وتؤول على نحو كامل بما ينسجم معها.

**5. عدم حصول المسؤولين على منفعة:** يضمن المتعاقد أنه لم ولن يقدم منفعة مباشرة أو غير مباشرة جراء تنفيذ العقد أو متعلقة به أو جراء رؤسوه عليه لأي ممثل عن المفوضية، أو مسؤول أو موظف فيها، أو وكيل عنها. ويُقر المتعاقد ويوافق على أن أي مخالفة لهذا الحكم هي مخالفة لبند أساسي في العقد.

**6. شراء البضائع:** حين يتطلب العقد شراء البضائع، كلياً أو جزئياً، تنطبق الأحكام التالية على أية مشتريات للبضائع بموجب العقد، ما لم ينص العقد تحديداً على خلاف ذلك:

**1.6 تسليم البضائع:** يقوم المتعاقد بتسليم البضائع أو توفيرها، وتتسلم المفوضية البضائع في مكان تسليم البضاعة المُحدّد في العقد وضمن وقت التسليم المُحدّد فيه. ويجب على المتعاقد تقديم وثائق الشحن للمفوضية (بما في ذلك، على سبيل المثال لا الحصر، بوالص الشحن البحري أو الجوي، والفواتير التجارية) كما هي مُحدّدة في العقد، أو كما تستخدم عادة في التجارة. ويجب أن تكون كافة كُتيبات الاستخدام، والتعليمات، والصور الإعلانية، وأية معلومات أخرى ذات صلة بالبضائع باللغة الإنجليزية ما لم ينص العقد على خلاف ذلك. وما لم ينص العقد على خلاف ذلك (باستخدام، على سبيل المثال لا الحصر، مصطلحات التجارة الدولية (INCOTERM) أو مصطلحات تجارية مماثلة)، يتحمل المتعاقد حصرياً كامل مخاطر خسارة البضائع أو تضررها، أو تلفها حتى تسليم البضائع فعلياً إلى المفوضية وفقاً لبنود العقد. ولا يُعتبر تسليم البضائع في حد ذاته قبولاً للبضائع من جانب المفوضية.

**2.6 معاينة البضائع:** إذا نصّ العقد على جواز معاينة البضائع قبل التسليم، يتعين على المتعاقد إخطار المفوضية حين تكون البضائع جاهزة للمعاينة قبل التسليم. وبصرف النظر عن أي معاينة قبل التسليم، يجوز للمفوضية أو أي من وكلائها المكلفين بالمعاينة فحص البضائع أيضاً عند التسليم من أجل التأكد من أن البضائع مطابقة للمواصفات والمتطلبات الواردة بالعقد. ويتعين توفير كافة التسهيلات والمساعدة المعقولة للمفوضية أو وكلائها المكلفين بالمعاينة دون تقاضي رسوم إضافية عليها، وتشمل تلك التسهيلات والمساعدة، على سبيل المثال لا الحصر، توفير رسومات وبيانات الإنتاج. وإن القيام بعمليات معاينة البضائع أو عدم القيام بذلك لا يُحلّ المتعاقد من أي من ضماناته أو من تنفيذ أي التزامات بموجب العقد.

**3.6 تجهيز وتغليف البضائع:** يقوم المتعاقد بتجهيز البضائع وتغليفها بغرض التسليم وفقاً لأعلى معايير التجهيز والتغليف لأغراض التصدير الخاصة بكل صنف وبحسب الكميات ووسيلة النقل. ويجب تجهيز البضائع وتغليفها ثم وضع العلامات

عليها بطريقة سليمة وفقاً للتعليمات المنصوص عليها في العقد، أو كما هو جرت عليه العادة في العمليات التجارية، ووفقاً لأية متطلبات يفرضها القانون المعمول به أو يفرضها الناقل أو مُصنَّع البضائع. ويجب عند التعبئة وضع، على وجه الخصوص، ما يدل على رقم العقد أو طلب الشراء وأية معلومات تعريفية أخرى تقدمها المفوضية وكذلك أية معلومات أخرى ضرورية لعمليات مناولة صحيحة للبضائع وتسليم سليم لها. وما لم ينص العقد على خلاف ذلك، لا يحق للمتعاقد استعادة أي من مواد التعبئة.

**4.6 النقل والشحن:** ما لم ينص العقد على خلاف ذلك (باستخدام، على سبيل المثال لا الحصر، مصطلحات التجارة الدولية (INCOTERM) أو مصطلحات تجارية مماثلة)، يقع على عاتق المتعاقد حصراً مسؤولية القيام بكافة ترتيبات النقل ودفع تكاليف الشحن والتأمين الخاصة بشحن البضائع وتسليمها وفقاً لمتطلبات العقد. ويتعين على المتعاقد التأكد من استلام المفوضية كافة مستندات النقل اللازمة في الوقت المناسب وذلك لتمكين المفوضية من استلام البضائع وفقاً لمتطلبات العقد.

**5.6 الضمانات:** ما لم ينص على خلاف ذلك في العقد، وبالإضافة إلى أية ضمانات وتعويضات وحقوق للمفوضية أخرى ينص عليها العقد أو تنشأ بموجبه ومع عدم الحد منها، يضمن المتعاقد ويكفل الآتي:

1.5.6 أن تكون البضائع، بما في ذلك تجهيزها وتعبئتها وتغليفها، مطابقة للمواصفات في العقد، وصالحة للأغراض التي عادة ما تستخدم لها مثل هذه البضائع ولأي أغراض ترد صراحة في العقد، وأن تكون ذات جودة ثابتة وخالية من الخلل والعيوب في التصميم والمواد والتصنيع.

2.5.6 في حال كان المتعاقد ليس هو الجهة الصانعة الأصلية للبضائع، يتوجب على المتعاقد تقديم للمفوضية كافة كفالات الصانعين بالإضافة إلى أي كفالات أخرى مطلوب توفيرها بموجب العقد؛

3.5.6 أن تكون البضائع وفق ما هو مطلوب في العقد من حيث الجودة والكمية والوصف، بما في ذلك حين تكون خاضعة للشروط السائدة في مكان الوجهة النهائية.

4.5.6 أن تكون البضائع خالية من أي حق أو ادعاء لطرف ثالث، بما في ذلك ادعاءات انتهاك أية حقوق للملكية الفكرية، بما في ذلك على سبيل المثال لا الحصر، براءات الاختراع وحقوق الطبع والنشر وأسرار الصنعة.

5.5.6 أن تكون البضائع جديدة وغير مستخدمة.

6.5.6 تبقى كافة الكفالات سارية المفعول بالكامل بعد أي تسليم للبضائع ولمدة لا تقل عن سنة واحدة بعد قبول المفوضية للبضائع وفقاً للعقد.

7.5.6 خلال الفترة التي تكون فيها كفالات المتعاقد سارية، وبناءً على إشعارٍ من المفوضية يفيد بأن البضائع لا تتطابق مع متطلبات العقد، يتعين على المتعاقد فوراً وعلى نفقته الخاصة تصحيح عدم المطابقة، أو في حال عدم قدرته على القيام بذلك، استبدال البضائع المعيبة ببضائع من الجودة نفسها أو أفضل، أو على نفقته الخاصة إزالة البضائع المعيبة وتسديد كامل الثمن المدفوع للبضائع المعيبة للمفوضية؛

8.5.6 ويستمر المتعاقد بالاستجابة لاحتياجات المفوضية لأية خدمات قد تكون مطلوبة فيما يتعلق بكفالات المتعاقد بموجب العقد.

**6.6 قبول البضائع:** لا تلتزم المفوضية تحت أي ظرفٍ من الظروف بقبول أيّ بضائعٍ لا تتطابق مع المواصفات أو المتطلبات في العقد. وقد تجعل المفوضية قبولها بالبضائع مشروطاً بتجاوز اختبارات القبول بنجاح كما قد ترد في العقد

أو يجري الاتفاق عليه خطياً بين الطرفين. ولا تلتزم المفوضية بأي حال من الأحوال بقبول أية بضائع إلا في حال تمكّن المفوضية من الحصول على فرصة معقولة لمعاينة البضائع بعد التسليم. وإذا ورد في العقد أنّ على المفوضية تقديم قبول خطي بالبضائع، فإن البضائع لا تُعد مقبولة ما لم تقدم المفوضية فعلياً هذا القبول خطياً. ولا يُشكّل تسديد المال في حد ذاته من جانب المفوضية بأي حال من الأحوال قبولاً بالبضائع.

**7.6 رفض البضائع:** بصرف النظر عن أية حقوق أو تعويضات أخرى للمفوضية بموجب العقد، وفي حال كانت أيّ من البضائع معيبة أو لا تتطابق مع المواصفات أو المتطلبات الأخرى الواردة في العقد، يحقّ للمفوضية، بخيارها منفردة، ردّ البضائع أو رفض قبولها. وضمن مهلة ثلاثين (30) يوماً بعد استلام إشعار من المفوضية برّد البضائع أو رفض قبولها، يتعين على المتعاقد القيام بما يلي وفق لخيار المفوضية منفردة:

1.7.6 تسديد المبلغ المدفوع بالكامل عندما تردّ المفوضية البضائع، أو تسديد جزء من المبلغ عند ردّ قسم من البضائع؛

2.7.6 أو إصلاح البضائع بطريقة تجعل من البضائع مطابقة للمواصفات أو غيرها من المتطلبات الواردة في العقد؛

3.7.6 أو استبدال البضائع ببضائع مماثلة من حيث الجودة أو أفضل منها؛

4.7.6 ودفع كافة التكاليف المتعلقة بالإصلاح أو ردّ البضائع المعيبة فضلاً عن التكاليف المتعلقة بتخزين أي من هذه البضائع المعيبة وتكاليف تسليم البضائع البديلة للمفوضية.

8.6 في حال اختارت المفوضية ردّ أيّ من البضائع للأسباب المنصوص عليها في البند (7.6) أعلاه، يحقّ للمفوضية شراء البضائع من مصدر آخر. وبالإضافة إلى أية حقوق أو تعويضات أخرى للمفوضية بموجب العقد، بما في ذلك على سبيل المثال لا الحصر، الحقّ في فسخ العقد، يتحمّل المتعاقد مسؤولية أية تكلفة إضافية تتجاوز ما تبقى من قيمة العقد الناتجة عن مثل هذا الشراء، بما في ذلك، في جملة أمور أخرى، تكاليف المشاركة في مثل هذه المشتريات، ويحقّ للمفوضية الحصول على تعويض من المتعاقد عن أية نفقات معقولة تكبّدها لحفظ البضائع وتخزينها لحساب المتعاقد.

**9.6 حقوق الملكية:** يضمن المتعاقد ويكفل أنّ البضائع المستلمة بموجب العقد لا يترتب عليها أية حقوق ملكية لطرف ثالث، بما في ذلك على سبيل المثال لا الحصر، أية رهون أو حجز لضمان دين. وما لم ينصّ العقد على خلاف ذلك صراحةً، ينتقل حقّ ملكية البضائع من المتعاقد إلى المفوضية عند استلام البضائع وقبول المفوضية بها وفقاً لمتطلبات العقد.

**10.6 رخص التصدير:** يتحمّل المتعاقد مسؤولية الحصول على أيّ رخصة تصدير مطلوبة فيما يتعلق بالبضائع أو بالمنتجات أو بالتقنيات، بما في ذلك البرمجيات المباعة للمفوضية أو المسلمة أو المرخصة أو المقدمة لها بموجب العقد. ويجب على المتعاقد تأمين أية رخصة تصدير من هذا القبيل على وجه السرعة. ومع مراعاة امتيازات وحصانات المفوضية ودون أي تنازل عنها، تقدم المفوضية للمتعاقد كل المساعدة المعقولة المطلوبة للحصول على أي رخصة تصدير من هذا القبيل. وفي حال رفضت أي جهة حكومية منح رخصة التصدير أو أخرتها أو أعاققت الحصول عليها، يتعين على المتعاقد أن يبلغ فوراً المفوضية خطياً وعليه التشاور معها لتمكين المفوضية من اتخاذ التدابير المناسبة لحل هذه المسألة.

## 7. التعويضات:

1.7 يتعين على المتعاقد تعويض المفوضية ومسؤوليها ووكلائها وموظفيها والدفاع عنهم، وإعفائهم من المسؤولية الناجمة عن وضد كل الدعاوى والإجراءات القضائية والمطالبات والطلبات والخسائر والمسؤوليات القانونية من أي نوع أو طبيعة

المرفوعة من طرف ثالثٍ ضد المفوضية، بما في ذلك على سبيل المثال لا الحصر، كل تكاليف التقاضي ومصاريفه وأتعاب المحاماة، ومدفوعات التسوية والأضرار، المستندة إلى أو الناشئة عن أو المتعلقة بالآتي:

1.1.7 المزاعم أو الادعاءات بأن حيازة المفوضية أو استخدامها لأي جهاز عليه براءة اختراع، أو لأي موادٍ عليها حقوق الطبع والنشر، أو لأيّة بضائع أو ممتلكات أو خدمات أخرى المقدمة أو المرخصة للمفوضية بموجب بنود العقد، كلياً أو جزئياً، على نحو منفصل أو على شكل مجموعة كما في الموصافات التي يضعها المتعاقد لهذا الغرض، أو كما اعتمدها على وجه التحديد، تُشكّل انتهاكاً لأيّة براءة اختراع، أو حقوق الطبع والنشر، أو العلامات التجارية، أو غيرها من حقوق الملكية الفكرية لطرفٍ ثالثٍ؛

2.1.7 أو أيّ أفعالٍ أو حالات تقصير من جانب المتعاقد، أو من أيّ متعاقد من الباطن أو أيّ شخصٍ يعمل على نحو مباشرٍ أو غير مباشرٍ معهم في تنفيذ العقد، والتي قد تقود إلى مسؤولية قانونية لأيّ شخصٍ ليس طرفاً في العقد، بما في ذلك على سبيل المثال لا الحصر، المطالبات والمسؤولية التي تأخذ طابع مطالبة بتعويض للعمال.

2.7 لا تنطبق التعويضات المنصوص عليها في البند (1.1.7) أعلاه على الآتي:

1.2.7 الادّعاء بوجود مخالفة ناجمة عن امتثال المتعاقد بالتعليمات الخطيّة المحدّدة من جانب المفوضية التي تُوجّه لتغيير في موصافات البضائع أو الممتلكات أو المواد أو المعدات أو التوريدات التي ستستخدم أو المستخدمة، أو التي تُوجّه طريقة تنفيذ العقد، أو التي تطلب استخدام موصافات لا تستخدم عادةً من جانب المتعاقد؛

2.2.7 أو الادّعاء بوجود مخالفة ناجمة عن الإضافات أو التغييرات في أيّة بضائع أو ممتلكات أو معدات أو مواد أو توريدات أو أيّ من مكوناتها المزودة بموجب العقد إذا قامت المفوضية أو أيّ طرفٍ آخر يعمل تحت إشرافها بهذه التغييرات.

3.7 بالإضافة إلى التزامات التعويض المنصوص عليها في هذه المادة (7)، يلتزم المتعاقد، على نفقته الخاصة، بالدفاع عن المفوضية ومسؤوليها ووكلائها وموظفيها، وفقاً لهذه المادة (7)، بغض النظر عما إذا كانت الدعاوى والإجراءات القضائية والمطالبات والطلبات قيد البحث تنسبُ في أو تقضي إلى أيّ خسارة أو مسؤولية قانونية.

4.7 يجب على المفوضية إخطار المتعاقد عن أيّ من هذه الدعاوى، والإجراءات القضائية، والمطالبات، والطلبات والخسائر أو المسؤولية في غضون فترة معقولة من الزمن بعد استلامها إشعاراً بها. ويتولى المتعاقد حصراً مسؤولية الدفاع في أيّ دعوى أو إجراء قضائي أو مطالبة أو طلب من هذا القبيل، كما يتولى المسؤولية حصراً عن كافة المفاوضات المتعلقة بالوصول لتسوية أو حل وسط لها، ويستثنى من ذلك ما يتعلّق بالقضايا المتصلة بحفظ الحقوق المتعلقة بالامتيازات والحصانات التي تتمتع بها المفوضية أو الدفاع عنها، حيث أنّ مسؤولية الحفاظ عليها أو الدفاع عنها تقع حصراً على عاتق المفوضية نفسها. ويحقّ للمفوضية، على نفقتها الخاصة، أن تكون ممثلةً في أيّ دعوى أو مطالبة أو طلب من هذا القبيل بمحامٍ مستقل ممن تختاره.

5.7 في حال، لأيّ سببٍ كان، حُظر على المفوضية، على نحو مؤقت أو دائم، استخدام أيّة بضائع أو ممتلكات أو خدمات مقدمة أو مرخص لها استخدمها من جانب المتعاقد، كلياً أو جزئياً، جراء أيّ دعوى أو إجراء قضائي، أو وجد أنّ هذا الاستخدام ينتهك أيّ براءة اختراع أو حقوق الطبع والنشر أو العلامات التجارية أو غيرها من حقوق الملكية الفكرية، أو في حال حُظر أو حُدّ منه أو جرى عرقلته جراء التوصل إلى تسوية فإنّ على المتعاقد، وعلى نفقته الخاصة، القيام على وجه السرعة بإحدى الإجراءات الآتية:

- 1.5.7 إما شراء الحق غير المُقيد لصالح المفوضية للاستمرار في استخدام هذه البضائع أو الخدمات المقدمة إليها؛
- 2.5.7 أو استبدال أو تعديل البضائع أو الخدمات المقدمة إلى المفوضية، أو جزء منها، ببضائع أو بخدمات، أو جزء منها، مماثلة أو أفضل منها وغير مخالفة؛
- 3.5.7 أو بردّ كامل الثمن للمفوضية الذي سدّته للحصول على حق الحصول على هذه البضائع أو الممتلكات أو الخدمات، أو جزء منها، أو استخدامها.

## 8. التأمينات والمسؤولية القانونية:

- 1.8 يتعين على المتعاقد أن يُعوّض المفوضية فوراً عن كافة الخسائر أو التّلف، أو الضّرر في ممتلكات المفوضية الذي تسبّب به الفريق العامل مع المتعاقد أو أيّ من المتعاقدين معه من الباطن، أو أيّ شخصٍ آخر يعمل على نحو مباشر أو غير مباشر مع المتعاقد أو أيّ من المتعاقدين معه من الباطن أثناء تنفيذ العقد.
- 2.8 ما لم ينصّ العقد على خلاف ذلك، وقبل البدء في تنفيذ أيّ التزامات أخرى بموجب العقد، ومع مراعاة أيّة قيود منصوص عليها في العقد، يتعين على المتعاقد استصدار ما يلي والمحافظة على سريانه خلال كامل مدة العقد، وخلال أيّ فترة تمديد له، ولفترة بعد أيّ فسخ للعقد بحيث تكون كافية على نحو معقول للتعامل مع الخسائر:

- 1.2.8 تأمين ضد كافة المخاطر المتعلقة بممتلكاته وأيّة معدات تستخدم في تنفيذ العقد؛
- 2.2.8 تأمين تعويضات العمال، أو ما يُعادلها، أو التأمين على مسؤولية ربّ العمل، أو ما يُعادلها، فيما يتعلّق بالفريق العامل مع المتعاقد بحيث تكفي لتغطية كافة مطالبات التعويض عن الإصابة والوفاة والعجز، أو أيّة تعويضات يفرضها القانون فيما يتعلّق بتنفيذ العقد؛
- 3.2.8 تأمين ضد المسؤولية تجاه طرفٍ ثالثٍ بمبلغ كافٍ لتغطية كافة المطالبات، بما في ذلك على سبيل المثال لا الحصر، مطالبات الوفيات والإصابات الجسدية، والمسؤولية عن المنتجات والعمليات المنجزة، والخسائر أو الضرر اللاحق بالممتلكات، والإصابة الشخصية والضرر الناتج عن الإعلانات التجارية، والتي تنشأ من تنفيذ المتعاقد للعقد أو تتعلّق بذلك، بما في ذلك على سبيل لا الحصر، المسؤولية الناشئة عن أو المتعلقة بأفعال المتعاقد أو حالات التقصير من جانبه، أو من الفريق العامل معه، أو وكلائه، أو مدعويّه، أو جراء استخدام، أثناء تنفيذ العقد، أيّ مركبات أو قوارب أو طائرات أو غيرها من وسائل المواصلات والمعدات، سواءً أكانت مملوكة للمتعاقد أم لا؛
- 4.2.8 والتأمينات الأخرى التي قد يُتفق عليها خطياً بين المفوضية والمتعاقد.

- 3.8 يجب أن تغطي بوالص التأمين ضد المسؤولية للمتعاقد المتعاقدين من الباطن أيضاً وجميع تكاليف الدفاع ويجب أن تتضمن بنداً موحداً عن " المسؤولية المتقابلة " .

- 4.8 يُقرّر المتعاقد ويوافق على ألاّ تتحمّل المفوضية أيّ مسؤولية لتوفير تغطية للتأمين على الحياة، والصحة، والحوادث، والسفر أو أيّ تغطية تأمينية أخرى التي قد تكون ضرورية أو مرغوباً بها فيما يتعلّق بأي فرد من الفريق العامل الذين يؤدّون خدمات للمتعاقد تتصل بالعقد.

- 5.8 باستثناء تأمين تعويض العمال أو أيّ برنامج تأمين ذاتي لدى المتعاقد ساري المفعول ومعتمد من المفوضية، ووفقاً لتقديرها، ولأغراض الوفاء بمتطلبات المتعاقد لتوفير التأمين بموجب العقد، فإنّه يتعين أن تتضمن بوالص التأمين المطلوبة بموجب العقد الآتي:



1.5.8 تسمية المفوضية بصفة مؤمن عليه إضافي في بوالص تأمين ضد المسؤولية، بما في ذلك، إذا لزم الأمر، على شكل شرط مضاف منفصل في البوليصه؛

2.5.8 تنازل عن حقوق الحلول لشركة تأمين المتعاقد ضد المفوضية؛

3.5.8 النص على أن تتلقى المفوضية إشعاراً خطياً من شركة تأمين المتعاقد قبل ما لا يقل عن ثلاثين (30) يوماً قبل إلغاء التغطية أو إحداث تغيير جوهري عليها؛

4.5.8 وبنداً للاستجابة وفق تأمين رئيسي (بدون اشتراك) بقسط وحيد فيما يتعلق بأي تأمين آخر قد يكون متاحاً للمفوضية.

6.8 يتحمل المتعاقد مسؤولية دفع كافة المبالغ الناجمة عن حد التحمل والاحتفاظ في البوالص التأمينية.

7.8 باستثناء أي برنامج تأمين ذاتي لدى المتعاقد ساري المفعول ومعتمد من المفوضية لأغراض الوفاء بمتطلبات المتعاقد للإيفاء بالتأمين بموجب العقد، يجب على المتعاقد الحفاظ على سريان التأمين المستصدر بموجب العقد من شركات تأمين ذات سمعة طيبة وتتمتع بمركز مالي جيد ومقبولة من المفوضية. وقبل المباشرة بأي التزامات بموجب العقد، يتعين على المتعاقد تقديم للمفوضية دليل، على شكل شهادة تأمين أو أي شكل آخر قد تطلبه المفوضية على نحو معقول، يوضح أن المتعاقد قد استصدر التأمينات وفقاً لمتطلبات العقد. وتحفظ المفوضية بحقها في الحصول، بموجب إشعار خطي إلى المتعاقد، على نسخ من أي بوليصة تأمين أو تفاصيل برنامج تأمين يُطلب من المتعاقد المحافظة على سريانه بموجب العقد. وبصرف النظر عن أحكام البند (3.5.8) أعلاه، يجب على المتعاقد على الفور إخطار المفوضية بشأن أي إلغاء أو تغيير جوهري في التغطية التأمينية المطلوبة بموجب العقد.

8.8 يُقر المتعاقد ويوافق على أنه لا يجوز تفسير شرط استصدار التأمين والمحافظة على سريانه على النحو المنصوص عليه في العقد ولا مبلغ هذا التأمين، بما في ذلك على سبيل المثال لا الحصر حد التحمل أو مبلغ الاحتفاظ المتعلق به، بأي حال من الأحوال على أنه يحد من مسؤولية المتعاقد الناشئة بموجب العقد أو المتعلقة به.

9. **الرهون والأعباء العقارية:** يتعين على المتعاقد ألا يتسبب أو يسمح بتسجيل أي رهن، أو حجز أو أي أعباء عقارية أخرى لصالح أي شخص أو الإبقاء عليها مسجلة في أي دائرة عامة أو لدى الأمم المتحدة لصالح أي أموال مستحقة للمتعاقد أو التي قد تصبح مستحقة نظير أي عمل أو نظير أي بضائع أو مواد موردة بموجب العقد، أو بسبب أي مطالبة أو طلب آخر بحق المتعاقد أو المفوضية.

10. **المعدات المقدمة من المفوضية للمتعاقد:** تبقى ملكية أي معدات ولوازم قد تقدمها المفوضية للمتعاقد لتنفيذ أية التزامات بموجب العقد عائدة لها، ويتعين أن تُعاد هذه المعدات للمفوضية عند انتهاء العقد أو عند عدم حاجة المتعاقد لها. وأن تكون حالة هذه المعدات عند إعادتها إلى المفوضية هي الحالة نفسها التي كانت عليها عند تسليمها للمتعاقد، مع مراعاة الاستهلاك الناشئ عن الاستعمال العادي، ويتحمل المتعاقد مسؤولية تعويض المفوضية عن التكاليف الفعلية لأي خسارة أو ضرر أو تردي في حال المعدات يتجاوز الاستهلاك الناشئ عن الاستعمال العادي.

11. **حقوق الطبع والنشر وبراءات الاختراع وحقوق الملكية الأخرى:**

11.1 باستثناء ما هو منصوص عليه صراحةً في العقد خلاف ذلك، تعود للمفوضية كافة حقوق الملكية الفكرية وحقوق الملكية الأخرى بما في ذلك، على سبيل المثال لا الحصر، براءات الاختراع، وحقوق الطبع، والعلامات التجارية، المتعلقة بالمنتجات، أو العمليات، أو الاختراعات، أو الأفكار، أو المعرفة، أو الوثائق وغيرها من المواد التي طورها المتعاقد

لصالح المفوضية بموجب العقد والتي تتصل مباشرة بتنفيذ العقد أو جرى إنتاجها أو إعدادها نتيجة التنفيذ أو أثناءه. ويُقر المتعاقد ويوافق على أن مثل هذه المنتجات والوثائق والمواد الأخرى تُشكّل أعمالاً جرت بالأجرة لصالح المفوضية.

2.11 في حال كانت الملكية الفكرية أو غيرها من حقوق الملكية تتكون من أي حقوق ملكية فكرية أو غيرها من حقوق الملكية التي (1) تعود للمتعاقد قبل تنفيذ المتعاقد لالتزاماته بموجب العقد، أو (2) أنه قد طورها أو اكتسابها، أو قد طُورت أو اكتسبت على نحو مستقل عن تنفيذ التزاماته، فلن تطالب المفوضية بحقوق ملكية فيها، ويمنح المتعاقد المفوضية ترخيص دائم لاستخدام مثل هكذا حقوق ملكية فكرية أو حقوق ملكية أخرى حصراً لأغراض العقد ووفقاً لمتطلباته.

3.11 بناءً على طلب من المفوضية، يتعين على المتعاقد اتخاذ كافة التدابير الضرورية، واستيفاء المستندات القانونية اللازمة، والمساعدة عموماً في تأمين حقوق الملكية هذه ونقلها أو ترخيصها لصالح المفوضية وفقاً لمقتضيات القانون النافذ ومتطلبات العقد.

4.11 مع مراعاة الأحكام السابقة، تؤول ملكية كافة الخرائط والرسومات، والصور الفوتوغرافية والجوية والمخططات والتقارير والتقييمات والتوصيات والوثائق وسائر البيانات الأخرى التي جمعها المتعاقد أو استلمها بموجب العقد للمفوضية، كما يتعين أن تكون متاحة للاستخدام أو التفتيش من جانب المفوضية في أوقات معقولة وفي أماكن معقولة، ويجب أن تعامل على أنها سرية، وأن تُسلم حصراً لمسؤولي المفوضية المخولين عند إنجاز العمل بموجب العقد.

12. **الدعاية، واستخدام الاسم، أو الشعار أو الختم الرسمي الخاص بالأمم المتحدة أو المفوضية:** لا يجوز للمتعاقد الترويج الإعلان على العرض على العلن لأغراض دعائية ما له علاقة بالتعاقد مع الأمم المتحدة أو المفوضية، كما لا يجوز للمتعاقد، بأي شكل من الأشكال استخدام الاسم، أو الشعار أو الختم الرسمي الخاص بالأمم المتحدة أو بالمفوضية، أو أي اختصار لاسم الأمم المتحدة أو المفوضية فيما يتعلق بأعماله أو غير ذلك دون الحصول على تصريح خطي من المفوضية. 13. **سرية الوثائق والمعلومات:** يتعين الحفاظ على سرية المعلومات والبيانات التي تعتبر ملكية خاصة بأي من الطرفين أو التي يسلمها أو يُفصح عنها أحد الطرفين ("المُفصح") إلى الطرف الآخر ("المُستلم") أثناء تنفيذ العقد، والتي تعد بمثابة ("معلومات")<sup>1</sup> سرية، كما يجب أن يجري التعامل معها على النحو الآتي:

1.13 يتعين على ("المُستلم") لهذه المعلومات القيام بالآتي:

1.1.13 أن يحيط معلومات المُفصح بالرعاية والانتباه نفسهما اللذين يحيط بهما المعلومات الخاصة به التي لا يرغب

في الإفصاح عنها أو نشرها أو توزيعها وذلك لتجنب الكشف عنها أو نشرها أو توزيعها؛

2.1.13 وأن يستخدم معلومات المُفصح حصراً للغرض الذي من أجله أُفصح عنها.

2.13 يجوز للمُستلم الإفصاح عن المعلومات إلى ما يلي من الأشخاص أو الكيانات شريطة أن يكون لديه اتفاق خطي معهم يلزمهم بالتعامل مع المعلومات على أنها سرية وفقاً للعقد وهذه المادة (13):

1.2.13 أي طرف آخر مع موافقة خطية مسبقة من المُفصح؛

2.2.13 موظفو المُستلم ومسؤولوه وممثلوه ووكلاؤه ممن يحتاجون تلك المعلومات لأغراض تنفيذ الالتزامات بموجب

العقد، وموظفو ومسؤولو وممثلو ووكلاء أي كيان قانوني (تابع للمُستلم، أو المُستلم يتبع له، أو في حال كان المُستلم

<sup>1</sup> تشمل المعلومات والبيانات التي تعدها المفوضية خاصة بها وسرية، على سبيل المثال لا الحصر، البيانات المتعلقة باللاجئين والأشخاص الذين تُعنى بهم المفوضية.

وهذا الكيان يتبعان كلاهما لجهة واحدة) ممّن يحتاجون تلك المعلومات لأغراض تنفيذ الالتزامات بموجب العقد، حيث يقصد بالكيان القانوني هنا لهذه الأغراض الآتي:

1.2.2.13 شركة يمتلك فيها الطرف أو يتحكم، سواءً على نحو مباشر أو غير مباشر، بأكثر من خمسين في المئة (50%) من الأسهم التي لها حق التصويت؛

2.2.2.13 أو أي كيان يتبع إدارياً للطرف؛

3.2.2.13 أو في حال المفوضية، هيئة رئيسة أو فرعية تابعة للأمم المتحدة أنشئت وفقاً لميثاق الأمم المتحدة.

3.13 يجوز للمتعاقد الإفصاح عن معلومات بالقدر المطلوب بموجب القانون، شريطة مراعاة امتيازات وحصانات المفوضية ودون أي تنازل عنها، ويتعين على المتعاقد إعطاء المفوضية إشعاراً مسبقاً عن طلب الإفصاح عن المعلومات قبل وقت كافٍ من أجل السماح للمفوضية بأن تحظى بمهلة معقولة لاتخاذ تدابير وقائية أو أي عمل آخر قد يكون مناسباً قبل الإفصاح.

4.13 يجوز للمفوضية الإفصاح عن المعلومات بالقدر الذي يتطلبه ميثاق الأمم المتحدة، أو وفقاً لقرارات الجمعية العامة أو أنظمتها أو القواعد الصادرة بموجبها.

5.13 لا يجوز منع المُستلم من الإفصاح عن المعلومات (1) التي حصل عليها المُستلم دون قيود من طرفٍ ثالثٍ لا ينتهك أي التزام يتعلق بالسريّة لصاحب تلك المعلومات أو أي شخص آخر، (2) أو التي كشف عنها المُفصح لطرفٍ ثالثٍ دون وجود أيّ التزام بالسريّة، (3) أو التي سبق للمُستلم معرفتها، (4) أو التي طورها المُستلم في أيّ وقت على نحو مستقل تماماً عن أيّ من الإفصاحات الواردة في هذا العقد.

6.13 تظل هذه الالتزامات والقيود المتعلقة بالسريّة سارية خلال مدة العقد، بما في ذلك أيّ تمديد له، وما لم ينص العقد على خلاف ذلك، تستمر بالسريان بعد أيّ فسخ أو انتهاء للعقد.

#### 14. القوة القاهرة؛ وغيرها من التغيرات في الأحوال:

1.14 في حال وقوع أمرٍ يُعد من القوة القاهرة وفي أقرب وقت ممكن بعد حدوثه، يتعين على الطرف المُتضرر إخطار الطرف الآخر خطياً وبالتفاصيل الكاملة بالأمر أو بوقوعه في حال أصبح الطرف المُتضرر جراً ذلك غير قادرٍ، كلياً أو جزئياً، على الوفاء بالتزاماته وتحمل مسؤولياتها بموجب العقد. ويقوم الطرف المُتضرر أيضاً بإخطار الطرف الآخر بأي تغييرات أخرى في الوضع أو بوقوع أية حدث من شأنه عرقلة أو يُنذر بعرقلة وفائه بالعقد. ويتعين على الطرف المُتضرر وخلال مهلة لا تزيد عن خمسة عشر (15) يوماً على تقديم الإشعار بوقوع القوة القاهرة أو تغييرات أخرى في الأحوال تقديم كشف إلى الطرف الآخر بالنفقات التقديرية التي من المرجح أن يتم تكبُّدها خلال مدة حدوث التغير في الأحوال أو وقوع القوة القاهرة. وعند استلام الإشعار أو الإشعارات المطلوبة بموجب هذا العقد، يتعين على الطرف غير المُتضرر من وقوع القوة القاهرة اتخاذ الإجراءات التي يراها مناسبة أو ضرورية في هذه الظروف، بما في ذلك منح الطرف المُتضرر مهلة زمنية إضافية معقولة لتنفيذ أيّ التزامات بموجب العقد.

2.14 إذا أصبح المتعاقد غير قادرٍ، كلياً أو جزئياً، بسبب قوة القاهرة على تنفيذ التزاماته والوفاء بمسؤولياته بموجب العقد، يحقّ للمفوضية تعليق العقد أو فسخه وفق الأحكام والشروط نفسها المنصوص عليها في المادة (15)، "الفسخ"، على أن تكون مدة الإخطار سبعة (7) أيام بدلاً من ثلاثين (30) يوماً. وفي أيّ حال، يحقّ للمفوضية اعتبار المتعاقد غير قادرٍ

على نحو دائم على تنفيذ التزاماته بموجب العقد في حال كان المتعاقد غير قادرٍ على الوفاء بالتزاماته، كلياً أو جزئياً، بسبب قوة قاهرة لأيّ مدة تزيد عن تسعين (90) يوماً.

3.14 يُقصد بالقوة القاهرة، في هذا العقد، أيّ فعلٍ من أفعال الطبيعة لا يمكن توقعه أو مقاومته، أو أيّ فعلٍ من أفعال الحرب (سواءً أكانت معلنة أم لا)، أو الغزو أو الثورة أو العصيان المسلح أو الإرهاب، أو أيّ أفعال أخرى ذات طبيعة أو قوة مماثلة، شريطة أن تكون هذه الأفعال ناجمة عن أسباب خارجة عن إرادة المتعاقد ودون خطأ أو إهمال من جانبه. ويُقرّ المتعاقد ويوافق على أنّه فيما يتعلق بأيّ التزامات بموجب العقد يتعين على المتعاقد تنفيذها في المناطق التي تُشارك فيها المفوضية بأيّ عمليات إنسانية أو ما شابه ذلك، أو تستعد للدخول إليها للقيام بذلك، أو الانسحاب منها، فإنّ أيّ تأخير أو عدم تنفيذ للالتزامات ينجم عن أو يتعلق بظروف قاسية داخل هذه المناطق، أو أيّ حوادث لقلقل مدنية تحدث في مثل هذه المناطق، لا يجوز اعتباره في حد ذاته تأخيراً أو عدم تنفيذ ناجماً عن قوة قاهرة بموجب العقد.

## 15. الفسخ:

1.15 يجوز لأحد الطرفين فسخ العقد، كلياً أو جزئياً، لأسباب مشروعة بعد انقضاء ثلاثين (30) يوماً من إشعار الطرف الآخر خطياً. ولا يجوز اعتبار المباشرة بإجراءات التوفيق أو التحكيم وفقاً للمادة (18) "تسوية المنازعات" أدناه، "سبباً" للفسخ أو اعتبارها بحد ذاتها فسخاً للعقد.

2.15 يجوز للمفوضية فسخ العقد في أيّ وقت من خلال تقديم إشعار خطّي للمتعاقد في أيّ حالة من الحالات التي يجري فيها الحد من أو إنهاء تفويض المفوضية المعمول به لتنفيذ العقد أو تمويلها المعمول به لتنفيذ العقد، سواءً كلياً أو جزئياً. وبالإضافة إلى ذلك، وما لم ينصّ العقد على خلاف ذلك، يجوز للمفوضية فسخ العقد دون الحاجة لإبداء الأسباب بإشعار خطّي مسبق للمتعاقد قبل ستين (60) يوماً.

3.15 في حال فسخ العقد، وعند استلام إشعار الفسخ الصادر عن المفوضية، يتعيّن على المتعاقد القيام بما يلي، إلّا في حال أعطت المفوضية توجيهات خطيّة أو في إشعار الفسخ خلاف ذلك:

1.3.15 اتّخاذ خطوات فورية لإنهاء تنفيذ أيّ التزامات بموجب العقد بطريقة سريعة ومنظمة، والحد من النفقات إلى أدنى حدٍّ ممكن عند القيام بذلك.

2.3.15 الامتناع عن المباشرة بأية التزامات إضافية بموجب العقد اعتباراً من تاريخ استلام مثل هذا الإشعار فصاعداً.

3.3.15 عدم إبرام تعاقدات إضافية من الباطن أو التقدم بطلبات شراء للمواد أو طلبات للحصول على خدمات أو تسهيلات أخرى، باستثناء ما تتفق المفوضية عليه مع المتعاقد خطياً على أنه ضروري لإتمام أي جزء من العقد لم يُفسخ.

4.3.15 فسخ كافة العقود من الباطن أو الطلبات المتعلقة بجزء العقد المفسوخ.

5.3.15 نقل ملكية الأجزاء المصنعة وغير المصنعة، والأعمال قيد الإنجاز، والأعمال المنجزة، واللوازم، والمواد الأخرى المنتجة أو المكتسبة لصالح جزء العقد المفسوخ إلى المفوضية وتسليمها لها.

6.3.15 تقديم كافة المخططات والرسومات والمعلومات وغيرها من الممتلكات المنجزة كلياً أو جزئياً التي كانت ستقدم للمفوضية بموجب العقد في حال أن العقد لم يكن قد فُسخ.

7.3.15 إكمال تنفيذ العمل غير المتعلق بالفسخ؛

- 8.3.15 اتخاذ أي إجراءات أخرى قد تكون ضرورية، أو تلك التي توجه بها المفوضية خطياً، لتقليل من الخسائر إلى الحد الأدنى، ولحماية أي ممتلكات والحفاظ عليها، سواء أكانت مادية أم غير مادية، المتصلة بالعقد التي هي في حوزة المتعاقد والتي للمفوضية مصلحة بحيازتها أو من المرجح منطقياً أن يكون للمفوضية مصلحة بحيازتها.
- 4.15 في حال فسخ العقد، يحق للمفوضية الحصول على حسابات معقولة مدونة من المتعاقد تتصل بكافة الالتزامات المنفذة أو التي تنتظر التنفيذ بموجب العقد. علاوة على ذلك، لا تلتزم المفوضية بالتسديد للمتعاقد إلا عن البضائع المسلمة إليها والخدمات المقدمة إليها وفقاً لمتطلبات العقد، وذلك فقط إذا كانت هذه البضائع أو الخدمات طُلبت أو قُدمت قبل استلام المتعاقد إشعار الفسخ من المفوضية أو قبل تقديم المتعاقد إشعار الفسخ للمفوضية.
- 5.15 يجوز المفوضية، دون المساس بأي حق أو تعويض آخر متاح لها، فسخ العقد فوراً في الحالات الآتية:
- 1.5.15 صدور حكم بإفلاس المتعاقد أو بتصفية ممتلكاته، أو أصبح معسراً، أو تقدم بطلب لتأجيل أو تعليق سداد الديون المترتبة عليه، أو تقدم بطلب لإعلانه معسراً.
- 2.5.15 منح المتعاقد قرار بتأجيل أو تعليق السداد، أو أعلن معسراً.
- 3.5.15 تنازل المتعاقد عن ممتلكاته لصالح واحد أو أكثر من دائنيه.
- 4.5.15 تعيين حارس قضائي بسبب إفسار المتعاقد.
- 5.5.15 تقدم المتعاقد بتسوية بدلاً عن الإفلاس أو الوضع تحت الحراسة القضائية؛
- 6.5.15 أو أن تُقرر المفوضية بعد التمعّن في الأمر أن المتعاقد أصبح عرضة لتغيير سلبي جوهري في مركزه المالي الأمر الذي من شأنه التهديد بالتأثير على نحو كبير على قدرة المتعاقد على تنفيذ أي من التزاماته بموجب العقد.
- 6.15 باستثناء ما يحظره القانون، يلتزم المتعاقد بتعويض المفوضية عن كافة الأضرار والتكاليف، بما في ذلك على سبيل المثال لا الحصر، كافة التكاليف التي تتكبدها المفوضية في أية إجراءات قانونية أو غير قانونية، الناجمة عن أي من الوقائع الواردة في البند (5.15) أعلاه، أو الناجمة عن فسخ العقد أو تتعلق بفسخه، حتى لو صدر حكم بإفلاس المتعاقد، أو مُنح قرار بتأجيل سداد الديون أو تعليقه، أو أعلن معسراً. حيث يتعين على المتعاقد إبلاغ المفوضية فوراً بوقوع أي من الأمور الواردة في البند (5.15) أعلاه، وعليه أن يقدم للمفوضية أية معلومات تتعلق بها.
- 7.15 لا تُخل أحكام هذه المادة (15) بأي حقوق أو تعويضات أخرى للمفوضية بموجب هذا العقد أو بخلافه.
16. **عدم التنازل عن الحقوق:** إن إخفاق أحد الطرفين في ممارسة أي من الحقوق المتاحة له، سواء بموجب العقد أم غير ذلك، لا يتعين أن يعتبره الطرف الآخر لأي غرض أنه يشكل تنازلاً عن مثل هذا الحق أو التعويض المرتبط به، ولا يُعفي الطرفين من أي من التزاماتهما بموجب العقد.
17. **عدم الحصرية:** ما لم ينص العقد على خلاف ذلك، لا تلتزم المفوضية بشراء أي حد أدنى من البضائع أو الخدمات من المتعاقد، ولن يكون هناك قيود على حق المفوضية في الحصول من أي مصدر آخر وفي أي وقت على البضائع أو الخدمات من النوع نفسه والجودة ذاتها والكمية عينها الواردة في العقد.
18. **تسوية المنازعات:**

1.18 **التسوية الودية:** يجب على الطرفين بذل قصارى جهدهما للتسوية الودية لأي نزاع أو خلاف أو مطالبة تنشأ عن العقد أو عن الإخلال به، أو فسخه، أو بطلانه. وحيث يرغب الطرفان بالتسوية الودية من خلال التوفيق، يجب أن يجري



التوفيق وفقاً لقواعد التوفيق السارية في حينه الخاصة بلجنة الأمم المتحدة للقانون التجاري الدولي ( " الأونسيترال" UNCITRAL)، أو وفقاً لإجراءات أخرى يتفق عليها الطرفان خطياً.

**2.18 التّحكيم:** في حال لم يجري تسوية النزاعات أو الخلافات أو المطالبات بين الطرفين الناشئة عن العقد أو عن الإخلال به أو فسخه أو بطلانه على نحو ودي بموجب البند (1.18) أعلاه خلال ستين (60) يوماً بعد استلام أحد الطرفين طلب خطي من الطرف الآخر للتوصّل لهذه التسوية الودية، تُحال من جانب أي من الطرفين إلى التحكيم وفقاً لقواعد الأونسيترال (UNCITRAL) للتحكيم السارية في حينه. ويجب أن تستند قرارات هيئة التحكيم على المبادئ العامة للقانون التجاري الدولي. ويتعين تمكين هيئة التحكيم من أن تأمر بعودة أو إتلاف البضائع أو أية ممتلكات، مادية أو غير مادية، أو أي معلومات سرية جرى تقديمها بموجب العقد، أو الأمر بفسخ العقد، أو الأمر باتخاذ أي تدابير وقائية أخرى بالنسبة للبضائع أو للخدمات أو لأي ممتلكات أخرى، سواء أكانت مادية أم غير مادية، أو لأي معلومات جرى تقديمها بموجب العقد، حسب الاقتضاء، وكل هذا وفقاً لسلطات هيئة التحكيم عملاً بالمادة (26) ( " تدابير الحماية المؤقتة" ) والمادة (34) ( "شكل قرار التحكيم وأثره" ) من قواعد الأونسيترال (UNCITRAL) للتحكيم. ولن يكون لهيئة التحكيم سلطة منح جزاءات تأديبية. وبالإضافة إلى ذلك، ما لم ينص العقد على خلاف ذلك صراحةً، لن يكون لهيئة التحكيم سلطة منح فائدة تزيد على سعر الفائدة بين البنوك في لندن ( "ليبور"، LIBOR ) السائد في حينه، ويجب أن تكون هذه الفائدة فائدة بسيطة فقط. ويلتزم الطرفان بأي قرار صادر عن هذا التحكيم بوصفه حكماً نهائياً للنزاع أو الخلاف أو المطالبة.

**19. الامتيازات والحصانات:** لا شيء في العقد أو أي شيء يتعلق به يعتبر تنازلاً، صريحاً أو ضمناً، عن أي من امتيازات وحصانات الأمم المتحدة، بما في ذلك هيئاتها الفرعية، أو المفوضية (بوصفها هيئة فرعية تابعة للأمم المتحدة).

## **20. الإعفاءات الضريبية:**

**1.20** تنص الفقرة 7 من المادة الثانية من اتفاقية امتيازات الأمم المتحدة وحصاناتها، من جملة أمور أخرى، على أنّ الأمم المتحدة، بما في ذلك المفوضية باعتبارها إحدى هيئاتها الفرعية، مُعفاة من جميع الضرائب المباشرة، باستثناء رسوم خدمات المرافق العامة، ومن القيود والرسوم الجمركية والرسوم ذات الطبيعة المماثلة فيما يتعلق بالمواد المستوردة أو المُصدّرة لاستخدامها الرسمي. وفي حال رفض أي سلطة حكومية الإقرار بإعفاءات المفوضية من هذه الضرائب والقيود والرسوم، يتعين على المتعاقد أن يسترشد، على الفور، برأي المفوضية في ذلك لتحديد الإجراء الذي يحظى بقبول كلا الطرفين.

**2.20** يُحوّل المتعاقد المفوضية بأن تقتطع من فواتيره أي مبلغ يُمثل هذه الضرائب أو الرسوم، إلا إذا كان المتعاقد قد استرشد برأي المفوضية قبل سدادها وقامت المفوضية، لكل حالة على حدة، بتفويض المتعاقد على نحو خاص لتسديد هذه الضرائب والرسوم بموجب احتجاج خطي. وفي هذه الحالة، يجب على المتعاقد تزويد المفوضية بما يثبت خطياً أن هذه الضرائب والرسوم قد سُددت بعد أن جرى التفويض بذلك، ويتوجب على المفوضية تعويض المتعاقد عن أي من هذه الضرائب والرسوم التي فرضته لدفعها والتي سدها المتعاقد بموجب احتجاج خطي.

**21. احترام القانون:** على المتعاقد الامتثال لكافة القوانين والأنظمة والقواعد واللوائح المتصلة بتنفيذ التزاماته بموجب العقد. علاوةً على ذلك، يجب على المتعاقد الامتثال لكافة الالتزامات المتعلقة بتسجيله بوصفه مزود مؤهل للبضائع أو الخدمات للمفوضية، وفقاً لما عليه هذه الالتزامات في إجراءات تسجيل المزودين.

## 22. التعديلات:

1.22 يمتلك مدير شعبة إدارة الطوارئ والإمداد، أو أي هيئة أخرى مشابهة أبلغت المفوضية المتعاقد عنها خطياً، سلطة الموافقة نيابة عن المفوضية على أي تعديل أو تغيير في العقد، أو على أي تنازل عن أي من أحكامه أو على أي علاقة تعاقدية إضافية من أي نوع مع المتعاقد. وبناءً على ذلك، لا يصبح أي تعديل أو تغيير في العقد نافذاً وينطبق على المفوضية إلا إذا نُصَّ عليه في تعديل خطي سليم من الناحية القانونية للعقد موقع من المتعاقد ومدير شعبة إدارة الطوارئ والإمداد أو أي هيئة أخرى مشابهة.

2.22 في حال تمديد العقد لفترات إضافية وفقاً لأحكام العقد وبنوده، فإن الأحكام والبنود المطبقة على مثل هذا التمديد من العقد هي ذات الأحكام والبنود المنصوص عليها في العقد، إلا إذا اتفق الطرفان على خلاف ذلك عملاً بتعديل سليم من الناحية القانونية مبرم وفقاً للبند (1.22) أعلاه.

3.22 لا تُعد أحكام أو بنود أي تعهدات أو تراخيص تكميلية، أو أي شكل آخر من أشكال الاتفاقيات التكميلية بشأن أي بضائع أو خدمات مقدمة بموجب العقد نافذة وتطبق على المفوضية ولا تُشكّل بأي حال من الأحوال موافقة للمفوضية عليها إلا في حال كانت أي من هذه التعهدات، والتراخيص أو الأشكال الأخرى هي موضوع تعديل سليم من الناحية القانونية مبرم وفقاً للبند (1.22) أعلاه.

## 23. تدقيق الحسابات والتحريرات:

1.23 تخضع كل فاتورة مسددة من المفوضية للتدقيق بعد التسديد من جانب مدققي الحسابات، سواءً من الداخل أو الخارج، من المفوضية أو عن طريق وكلاء مؤهلين تعتمدهم المفوضية في أي وقت خلال مدة العقد ولمدة (3) سنوات بعد انتهاء العقد أو فسخه. ويحق للمفوضية استرجاع أية مبالغ من المتعاقد يتضح من هذا التدقيق أن المفوضية سددها بما لا يتفق مع أحكام وبنود العقد.

2.23 يُقر المتعاقد ووافق بأن تجري المفوضية، بين الحين والآخر، تحريات تتعلّق بأي جانب من جوانب العقد أو بإبرامه، وبالالتزامات المنفذة بموجب العقد، وبعمليات المتعاقد المتعلّقة عموماً بتنفيذ العقد. ولا يسقط حق المفوضية بإجراء تحريات والتزام المتعاقد بالامتثال لمثل هذه التحريات عند انتهاء العقد أو فسخه. ويتعيّن على المتعاقد أن يبدي تعاونه التام وفي الوقت المناسب مع أي عمليات تفتيش، أو تدقيق بعد التسديد، أو أي تحريات. ويشمل هذا التعاون، على سبيل المثال لا الحصر، على التزام المتعاقد بإتاحة الفريق العامل معه وأية وثائق ذات الصلة بهذه الأغراض في أوقات معقولة وبشروط معقولة، وبمنح المفوضية القدرة على الدخول لمقرات المتعاقد في أوقات معقولة وبشروط معقولة للوصول للفريق العامل معه والوثائق ذات الصلة. ويتعيّن على المتعاقد الطلب من عملائه، بما في ذلك على سبيل المثال لا الحصر، محاميه أو محاسبه أو مستشاريه الآخرين، التعاون على نحو مناسب مع أي عمليات للتفتيش، أو التدقيق بعد التسديد، أو التحريات التي تجريها المفوضية بموجب هذا العقد.

## 24. القيود على الدعاوى:

1.24 باستثناء ما يتعلّق بأيّ التزامات بالتعويض واردة في المادة (7) أعلاه، أو كما يُنص عليها في العقد خلاف ذلك، فإن أي إجراءات للتّحكيم وفقاً للبند (2.18) أعلاه ناشئة عن العقد يجب أن تبدأ في غضون ثلاث سنوات بعد تحقق سبب الدعوى.

2.24 يُقرّ ويوافق الطرفان، لهذه الأغراض، على تحقق ما يستوجب دعوى عند وقوع مخالفة فعلية، أو في حالة وجود عيوب كامنة فيتحقق ما يستوجب دعوى عند معرفة أو وجوب معرفة الطرف المُتضرر بكل العناصر الأساسية لسبب الدعوى، أو في حالة وجود مخالفة في الكفالة فيتحقق ما يستوجب دعوى عند إجراء عرض التسليم، إلا إذا كانت الكفالة تمتد إلى الأداء المستقبلي للبضائع أو لأيّ عملية أو نظام وكان اكتشاف المخالفة يتطلب مرور الوقت حتى جاهزية أداء هذه البضائع أو العملية أو النظام وفقاً لمتطلبات العقد، فعندها يتحقق سبب الدعوى ببدء العمل المستقبلي فعلياً.

25. **تشغيل الأطفال:** يكفل المتعاقد ويضمن بالألّا يُشارك هو أو الشركات التي يتبع لها (إن وجدت)، أو أيّ من الشركات التابعة له (إن وجدت) في أي ممارسات تتعارض مع الحقوق المنصوص عليها في اتفاقية حقوق الطفل، بما في ذلك المادة (32) منها، والتي تتطلب، من جملة أمور أخرى، حماية الطفل من أداء أيّ عمل يُرجّح أن يكون خطيراً أو أن يمثل إعاقة لتعليم الطفل، أو أن يكون ضاراً بصحة الطفل أو بنموه البدني أو العقلي أو الروحي أو المعنوي أو الاجتماعي. ويُقرّ المتعاقد ويوافق على أن أحكام هذا العقد تشكل شرطاً أساسياً في العقد، وأن أيّ مخالفة لهذه الكفالة والضمانة تُخوّل المفوضية فسخ العقد فور إخطار المتعاقد، دون أيّ مسؤولية عن رسوم الفسخ أو أيّ مسؤولية أخرى من أي نوع.

26. **الألغام:** يضمن المتعاقد ويكفل بالألّا يُشارك هو أو الشركات التي يتبع لها (إن وجدت)، أو أيّ من الشركات التابعة له (إن وجدت) في بيع الألغام المضادة للأفراد أو المكونات المُستخدمة في صناعة الألغام المضادة للأفراد أو تصنيعها. ويُقرّ المتعاقد ويوافق على أن أحكام هذا العقد تشكل شرطاً أساسياً في العقد، وأن أيّ مخالفة لهذه الكفالة والضمانة تُخوّل المفوضية فسخ العقد فور إخطار المتعاقد، دون أيّ مسؤولية عن رسوم الفسخ أو أيّ مسؤولية أخرى من أي نوع.

## 27. الاستغلال الجنسي:

1.27 يتوجب على المتعاقد اتخاذ كافة التدابير المناسبة لمنع الاستغلال والانتهاك الجنسيين لأيّ شخص من جانب الفريق العامل معه أو أيّ أشخاص آخرين يعملون معه أو يأترون بأمره لتنفيذ أي خدمات بموجب العقد. ولهذه الأغراض، يُشكّل النشاط الجنسي مع أيّ شخص أقل من الثامنة عشرة من العمر، بغض النظر عن أيّ قوانين متعلقة بالموافقة، استغلالاً وانتهاكاً جنسيين لهذا الشخص. علاوة على ذلك، يتمتع المتعاقد عن إعطاء أيّ أموال أو بضائع أو خدمات أو أشياء أخرى ذات قيمة مقابل خدمات أو أنشطة جنسية، أو عن ممارسة أي أنشطة جنسية استغلالية أو مهينة لأيّ شخص، ويتخذ كافة التدابير المعقولة والمناسبة لمنع الفريق العامل معه أو أيّ أشخاص آخرين يعملون معه أو يأترون بأمره من القيام بما سبق. ويُقرّ المتعاقد ويوافق على أن أحكام هذا العقد تشكل شرطاً أساسياً في العقد، وأن أيّ مخالفة لهذه الكفالة والضمانة تُخوّل المفوضية فسخ العقد فور إخطار المتعاقد، دون أيّ مسؤولية عن رسوم الفسخ أو أيّ مسؤولية أخرى من أي نوع.

2.27 لا تطبق المفوضية المعيار السابق المتعلق بالعمر في أي حالة من الحالات التي يكون فيها أحد من الفريق العامل مع المتعاقد أو أيّ شخص آخر يعمل معه لتنفيذ أي خدمات بموجب العقد متزوجاً من شخص بعمر أقل من سن الثامنة عشرة ويمارس معه نشاط جنسي وكان هذا الزواج صحيحاً وفقاً لقوانين بلد جنسية هذا الشخص.

28. **استغلال اللاجئين وغيرهم من الأشخاص الذين تُعنى بهم المفوضية والإساءة إليهم:** يضمن المتعاقد بإعطاء تعليمات للفريق العامل معه بالامتناع عن أيّ سلوك من شأنه أن ينعكس سلباً على المفوضية و / أو الأمم المتحدة وعن أيّ نشاط يتنافى مع أهداف ومقاصد الأمم المتحدة أو ولاية المفوضية لضمان حماية اللاجئين وغيرهم من الأشخاص الذين تُعنى بهم المفوضية. ويتعهد المتعاقد بموجب هذا العقد باتخاذ كافة التدابير الممكنة لمنع الفريق العامل معه من استغلال اللاجئين

وغيرهم من الأشخاص الذين تُعنى بهم المفوضية والإساءة إليهم. وإن إخفاق المتعاقد في التّحقيق في مزاعم الاستغلال والإساءة الموجهة ضد الفريق العامل معه أو تلك المتعلّقة بأنشطته أو إخفاقه في اتخاذ إجراءات تصحيحية عند حدوث الاستغلال أو الإساءة يُحوّل المفوضية فسخ العقد فور إخطار المتعاقد، دون أن تتكبّد المفوضية أيّة تكلفة جرّاء ذلك.

**29. تعليمات التسديد:** تقوم المفوضية، عند تحقق شروط التسليم، ما لم ينص على خلاف ذلك في العقد أو أمر الشراء، بالتسديد عبر تحويل مصرفي في غضون ثلاثين يوماً من استلام فاتورة المتعاقد الخاصة بالبضائع ونسخاً من الوثائق الأخرى المحدّدة في العقد. وإن التسديد مقابل الفاتورة المشار إليها أعلاه سوف يُبيّن أيّ خصم وارد في بنود التسديد المتفق عليها بين الطرفين، بشرط أن يتم السداد في غضون الفترة المنصوص عليها في بنود التسديد هذه. ولا تجوز زيادة الأسعار المُبيّنة في العقد أو أمر الشراء إلا من خلال موافقة خطيّة صريحة من المفوضية. وتُرسل الوثائق إلى العنوان المُبيّن في العقد أو أمر الشراء.

## **General Conditions of Contract for Civil Works (October 2000 version)**

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Appendix I: Formats of Performance Security  
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Performance Bond

## **1. DEFINITIONS**

For the purpose of the Contract Documents the words and expressions below shall have the following meanings:

- a) "Employer" means the United Nations High Commissioner for Refugees (UNHCR).
- b) "Contractor" means the person whose tender has been accepted and with whom the Contract has been entered into.
- c) "Engineer" means the person whose services have been engaged by UNHCR to administer the Contract as provided therein, as will be notified in writing to the Contractor.
- d) "Contract" means the written agreement between the Employer and the Contractor, to which these General Conditions are annexed.
- e) "The Works" means the works to be executed and completed under the Contract.
- f) "Temporary Works" shall include items to be constructed which are not intended to be permanent and form part of the Works.
- g) "Drawings" and "Specifications" mean the Drawings and Specifications referred to in the Contract and any modification thereof or addition thereto furnished by the Engineer or submitted by the Contractor and approved in writing by the Engineer in accordance with the Contract.
- h) "Bill of Quantities" is the document in which the Contractor indicates the cost of the Works, on the basis of the foreseen quantities of items of work and the fixed unit prices applicable to them.
- i) "Contract Price" means the sum agreed in the Contract as payable to the Contractor for the execution and completion of the Works and for remedying of any defects therein in accordance with the Contract.
- j) "Site" means the land and other places on, under, in or through which the Works or Temporary Works are to be constructed.

## **2. SINGULAR AND PLURAL**

Words importing persons or parties shall include firms or companies and words importing the singular only shall also include the plural and vice versa where the context requires.

## **3. HEADINGS OR NOTES**

The headings or notes in the Contract Documents shall not be deemed to be part thereof or be taken into consideration in their interpretation.

#### **4. LEGAL RELATIONSHIPS**

The Contractor and the sub-contractor(s), if any, shall have the status of an independent contractor vis-à-vis the Employer. The Contract Documents shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall, in the exercise of his duties and powers under the Contract, be entitled to performance by the Contractor of its obligations, and to enforcement thereof. Nothing contained in the Contract Documents shall create any contractual relationship between the Employer or the Engineer and any subcontractor(s) of the Contractor.

#### **5. GENERAL DUTIES/POWERS OF ENGINEER**

- a) The Engineer shall provide administration of Contract as provided in the Contract Documents. In particular, he shall perform the functions hereinafter described.
- b) The Engineer shall be the Employer's representative vis-à-vis the Contractor during construction and until final payment is due. The Engineer shall advise and consult with the Employer. The Employer's instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the Employer only to the extent provided in the Contract Documents as they may be amended in writing in accordance with the Contract. The duties, responsibilities and limitations of authority of the Engineer as the Employer's representative during construction as set forth in the Contract shall not be modified or extended without the written consent of the Employer, the Contractor and the Engineer.
- c) The Engineer shall visit the Site at intervals appropriate to the stage of construction to familiarize himself generally with the progress and quality of the Works and to determine in general if the Works are proceeding in accordance with the Contract Documents. On the basis of his on-site observations as an Engineer, he shall keep the Employer informed of the progress of the Works.
- d) The Engineer shall not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Works or the Temporary Works. The Engineer shall not be responsible for or have control or charge over the acts or omissions of the Contractor (including the Contractor's failure to carry out the Works in accordance with the Contract) and of Sub-contractors or any of their agents or employees, or any other persons performing services for the Works, except if such acts or omissions are caused by the Engineer's failure to perform his functions in accordance with the contract between the Employer and the Engineer.
- e) The Engineer shall at all times have access to the Works wherever and whether in preparation or progress. The Contractor shall provide facilities for such access so that the Engineer may perform his functions under the Contract.

- f) Based on the Engineer's observations and an evaluation of the documentation submitted by the Contractor together with the invoices, the Engineer shall determine the amounts owed to the Contractor and shall issue Certificates for Payment as appropriate.
- g) The Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformity with the design concept of the Works and with the provisions of the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.
- h) The Engineer shall interpret the requirements of the Contract Documents and judge the performance thereunder by the Contractor. All interpretations and orders of the Engineer shall be consistent with the intent of and reasonably inferable from the Contract Documents and shall be in writing or in the form of drawings. Either party may make a written request to the Engineer for such interpretation. The Engineer shall render the interpretation necessary for the proper execution of the Works with reasonable promptness and in accordance with any time limit agreed upon. Any claim or dispute arising from the interpretation of the Contract Documents by the Engineer or relating to the execution or progress of the Works shall be settled as provided in Clause 71 of these General Conditions.
- i) Except as otherwise provided in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract nor to order any work involving delay in completion of the Works or any extra payment to the Contractor by the Employer, or to make any variations to the Works.
- j) In the event of termination of the employment of the Engineer, the Employer shall appoint another suitable professional to perform the Engineer's duties.
- k) The Engineer shall have authority to reject work which does not conform to the Contract Documents. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the intent of the Contract Documents, he will have authority to require special inspection or testing of the work whether or not such work be then fabricated, installed or completed. However, neither the Engineer's authority to act nor any reasonable decision made by him in good faith either to exercise or not to exercise such authority shall give rise to any duty or responsibility of the Engineer to the Contractor, any subcontractor, any of their agents or employees, or any other person performing services for the Works.
- l) The Engineer shall conduct inspections to determine the dates of Substantial Completion and Final Completion, shall receive and forward to the Employer for the Employer's review written warranties and related documents required by the Contract and assembled by the Contractor, and shall issue a final Certificate for Payment upon compliance with the requirements of Clause 47 hereof and in accordance with the Contract.
- m) If the Employer and Engineer so agree, the Engineer shall provide one or more Engineer's Representative(s) to assist the Engineer in carrying out his responsibilities at the site. The

Engineer shall notify in writing to the Contractor and the Employer the duties, responsibilities and limitations of authority of any such Engineer's Representative(s).

## **6. CONTRACTOR'S GENERAL OBLIGATIONS/RESPONSIBILITIES**

### **6.1.Obligation to Perform in Accordance with Contract**

The Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract, with due care and diligence and to the satisfaction of the Engineer, and shall provide all labor, including the supervision thereof, materials, Constructional Plant and all other things, whether of a temporary or permanent nature, required in and for such execution, completion and remedying of defects, as far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. The Contractor shall comply with and adhere strictly to the Engineer's instructions and directions on any matter, touching or concerning the Works.

### **6.2 Responsibility for Site Operations**

The Contractor shall take full responsibility for the adequacy, stability and safety of all site operations and methods of construction, provided that the Contractor shall not be responsible, except as may be expressly provided in the Contract, for the design or specification of the Permanent Works or of any Temporary Works prepared by the Engineer.

### **6.3.Responsibility for Employees**

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

### **6.4.Source of Instructions**

The Contractor shall neither seek nor accept instructions from any authority external to the Employer, the Engineer or their authorized representatives in connection with the performance of his services under this Contract. The Contractor shall refrain from any action which may adversely affect the Employer and shall fulfill his commitments with fullest regard for the interest of the Employer.

### **6.5.Officials Not to Benefit**

The Contractor warrants that no official of the Employer has been or shall be admitted by the Contractor to any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of the Contract.

### **6.6.Use of Name, Emblem or Official Seal of UNHCR or the United Nations**

The Contractor shall not advertise or otherwise make public the fact that he is performing, or has performed services for the Employer or use the name, emblem or official seal of the Employer or the United Nations or any abbreviation of the name of the Employer or the United Nations for advertising purposes or any other purposes.

#### **6.7. Confidential Nature of Documents**

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under the Contract shall be the property of the Employer, shall be treated as confidential and shall be delivered only to the duly authorized representative of the Employer on completion of the Works; their contents shall not be made known by the Contractor to any person other than the personnel of the Contractor performing services under this Contract without the prior written consent of the Employer.

### **7. ASSIGNMENT AND SUBCONTRACTING**

#### **7.1. Assignment of Contract**

The Contractor shall not, except after obtaining the prior written approval of the Employer, assign, transfer, pledge or make other disposition of the Contract or any part thereof or of any of the Contractor's rights, claims or obligations under the Contract.

#### **7.2. Subcontracting**

In the event the Contractor requires the services of subcontractors, the Contractor shall obtain the prior written approval of the Employer for all such subcontractors. The approval of the Employer shall not relieve the Contractor of any of his obligations under the Contract, and the terms of any subcontract shall be subject to and be in conformity with the provisions of the Contract.

#### **7.3. Assignment of Subcontractor's Obligations**

In the event of a subcontractor having undertaken towards the Contractor in respect of the work executed or the goods, materials, Plant or services supplied by such subcontractor for the Works, any continuing obligation extending for a period exceeding that of the Defects Liability Period under the Contract, the Contractor shall at any time after the expiration of such Period, assign to the Employer, at the Employer's request and cost, the benefit of such obligation for the unexpired duration thereof.

### **8. DRAWINGS**

#### **8.1. Custody of drawings**

The drawings shall remain in the sole custody of the Employer but two (2) copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Works, the Contractor shall return to the Employer all drawings provided under the Contract.

#### **8.2. One copy of Drawings to be kept on Site**

One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized in writing by the Engineer.

#### **8.3. Disruption of Progress**

The Contractor shall give written notice to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

### **9. WORK BOOK**

The Contractor shall maintain a Work Book at the Site with numbered pages, in one original and two copies. The Engineer shall have full authority to issue new orders, drawings and instructions to the Contractor, from time to time and as required for the correct execution of the Works. The Contractor shall be bound to follow such orders, drawings and instructions.

Every order shall be dated and signed by the Engineer and the Contractor, in order to account for its receipt.

Should the Contractor want to refuse an order in the Work Book, he shall so inform the Employer, through the Engineer, by means of an annotation in the Work Book made within three (3) days from the date of the order that the Contractor intends to refuse. Failure by the Contractor to adhere to this procedure shall result in the order being deemed accepted with no further possibility of refusal.

The original of the Work Book shall be delivered to the Employer at the time of Final Acceptance of the Works. A copy shall be kept by the Engineer and another copy by the Contractor.

### **10. PERFORMANCE SECURITY**

- a) As guarantee for his proper and efficient performance of the Contract, the Contractor shall on signature of the Contract furnish the Employer with a Performance Security issued for the benefit of the Employer. The amount and character of such security (bond or guarantee) shall be as indicated in the Contract.

- b) The Performance Bond or Bank Guarantee must be issued by an acceptable insurance company or accredited bank, in the format included in Appendix I to these General Conditions, and must be valid up to twenty-eight days after issuance by the Engineer of the Certificate of Final Completion. The Performance Bond or Bank Guarantee shall be returned to the Contractor within twenty-eight days after the issuance by the Engineer of the Certificate of Final Completion, provided that the Contractor shall have paid all money owed to the Employer under the Contract.
- c) If the surety of the Performance Bond or Bank Guarantee is declared bankrupt or becomes insolvent or its right to do business in the country of execution of the Works is terminated, the Contractor shall within five (5) days thereafter substitute another bond or guarantee and surety, both of which must be acceptable to the Employer.

## **11. INSPECTION OF SITE**

The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before submitting his Tender and signing the Contract as to all matters relative to the nature of the land and subsoil, the form and nature of the Site, details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services, the quantities and nature of the work and materials necessary for the completion of the Works, the means of access to the Site, and the accommodation he may require, and in general to have himself obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect his Tender, and no claims will be entertained in this connection against the Employer.

## **12. SUFFICIENCY OF TENDER**

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the construction of the Works and of the rates and prices, which rates and prices shall, except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and completion of the Works.

## **13. PROGRAMME OF WORK TO BE FURNISHED**

Within the time limit specified in the Contract, the Contractor shall submit to the Engineer for his consent a detailed Programme of Work showing the order of procedure and the method in which he proposes to carry out the Works. In preparing his Programme of Work the Contractor shall pay due regard to the priority required by certain works. Should the Engineer, during the progress of work, require further modifications to the Programme of Work, the Contractor shall review the said program. The Contractor shall also whenever required by the Engineer submit particulars in writing of the Contractor's arrangements for carrying out the Works and of the Constructional Plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be. The submission of such program, or any modifications thereto, or the particulars required by the Engineer, shall not relieve the Contractor of any of his duties or obligations under the Contract nor shall the



incorporation of any modification to the Programme of Work either at the commencement of the contract or during its course entitle the Contractor to any additional payments in consequence thereof.

#### **14. WEEKLY SITE MEETING**

A weekly site meeting shall be held between the UNHCR Project Coordinator or engineer, if any, the representative of the Contractor and the Engineer or the Engineer's Representative, in order to verify that the Works are progressing normally and are executed in accordance with the Contract.

#### **15. CHANGE ORDERS**

- a) The Engineer may instruct the Contractor, with the approval of the Employer and by means of Change Orders, all variations in quantity or quality of the Works, in whole or in part, that are deemed necessary by the Engineer.
- b) Processing of change orders shall be governed by clause 48 of these General Conditions.

#### **16. CONTRACTOR'S SUPERINTENDENCE**

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfillment of the Contractor's obligations under the Contract. The Contractor or a competent and authorized agent or representative of the Contractor approved in writing by the Engineer, which approval may at any time be withdrawn, shall be constantly on the site and shall devote his entire time to the superintendence of the Works. Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer. If the approval of such agent or representative shall be withdrawn by the Engineer, as provided in Clause 17(2) hereinafter, or if the removal of such agent or representative shall be requested by the Employer under Clause 17(3) hereinafter, the Contractor shall as soon as it is practicable after receiving notice of such withdrawal remove the agent or representative from the Site, and replace him by another agent or representative approved by the Engineer. Notwithstanding the provision of Clause 17(2) hereinafter, the Contractor shall not thereafter employ, in any capacity whatsoever, a removed agent or representative again on the Site.

#### **17. CONTRACTOR'S EMPLOYEES**

- a) The Contractor shall provide and employ on the Site in connection with the execution and completion of the Works and the remedying of any defects therein:
  - i. Only such technical assistants as are skilled and experienced in their respective callings and such sub-agent foremen and leading hands as are competent to give proper supervision to the work they are required to supervise, and

- ii. Such skilled, semi-skilled, and unskilled labour as is necessary for the proper and timely execution and completion of the Works.
- b) The Engineer shall be at liberty to object to and require the Contractor to remove forthwith from the Works any person employed by the Contractor in or about the execution or completion of the Works, who in the opinion of the Engineer is misconducting himself, or is incompetent or negligent in the proper performance of his duties, or whose employment is otherwise considered reasonably by the Engineer to be undesirable, and such person shall not be again employed on the Site without the written permission of the Engineer. Any person so removed from the Works shall be replaced as soon as reasonably possible by a competent substitute approved by the Engineer.
- c) Upon written request by the Employer, the Contractor shall withdraw or replace from the Site any agent, representative or other personnel who does not conform to the standards set forth in paragraph (1) of this Clause. Such request for withdrawal or replacement shall not be considered as termination in part or in whole of this Contract. All costs and additional expenses resulting from any withdrawal or replacement for whatever reason of any of the Contractor's personnel shall be at the Contractor's expense.

## **18. SETTING-OUT**

The Contractor shall be responsible for the true and proper setting out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labor in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer.

## **19. WATCHING AND LIGHTING**

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or by any duly constituted authority for the protection of the Works and the materials and equipment utilized therefor or for the safety and convenience of the public or others.

## **20. CARE OF WORKS**

- a) From the commencement date of the Works to the date of substantial completion as stated in the Certificate of Substantial Completion, the Contractor shall take full responsibility for the care thereof and of all Temporary Works. In the event that any damage or loss should happen to the Works or to any part thereof or to any Temporary Works from any cause whatsoever (save and except as shall be due to Force Majeure as defined in Clause 66 of these General Conditions), the Contractor shall at his own cost repair and make good the same so that, at completion, the Works shall be in good order and condition and in conformity in every

respect with the requirements of the Contract and the Engineer's instructions. The Contractor shall also be liable for any damage to the Works occasioned by him in the course of any operations carried out by him for the purpose of complying with his obligations Clause 47 hereof.

- b) The Contractor shall be fully responsible for the review of the Engineering design and details of the Works and shall inform the Employer of any mistakes or incorrectness in such design and details which would affect the Works.

## **21. INSURANCE OF WORKS, ETC.**

Without limiting his obligations and responsibilities under Clause 20 hereof, the Contractor shall insure immediately following signature of this Contract, in the joint names of the Employer and the Contractor (a) for the period stipulated in Clause 20(1) hereof, against all loss or damage from whatever cause arising, other than cause of Force majeure as defined in clause 66 of these General Conditions, and (b) against loss or damage for which the Contractor is responsible, in such manner that the Employer and the Contractor are covered for the period stipulated in Clause 20 (1) hereof and are also covered during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with his obligations under Clause 47 hereof:

- a) The Works, together with the materials and Plant for incorporation therein, to their full replacement cost, plus an additional sum of ten (10) per cent of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature;
- b) The Contractor's equipment and other things brought on to the Site by the Contractor to the replacement value of such equipment and other things;
- c) An insurance to cover the liabilities and warranties of Section 52(4);

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and the Contractor shall, whenever required, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

## **22. DAMAGE TO PERSONS AND PROPERTY**

The Contractor shall (except if and so far as the Contract provides otherwise) indemnify, hold and save harmless and defend at his own expense the Employer, its officers, agents, employees and servants from and against all suits, claims, demands, proceedings, and liability of any nature or kind, including costs and expenses, for injuries or damages to any person or any property whatsoever which may arise out of or in consequence of acts or

omissions of the Contractor or its agents, employees, servants or subcontractors in the execution of the Contract. The provision of this Clause shall extend to suits, claims, demands, proceedings and liability in the nature of workmen's compensation claims and arising out of the use of patented inventions and devices. Provided always that nothing herein contained shall be deemed to render the Contractor liable for or in respect of or with respect to:

- a) The permanent use or occupation of land by the Works or any part thereof;
- b) The right of the Employer to construct the Works or any part thereof on, over, under, or through any land.
- c) Interference whether temporary or permanent with any right of light, airway or water or other easement or quasi-easement which is the unavoidable result of the construction of the Works in accordance with the Contract.
- d) Death, injuries or damage to persons or property resulting from any act or neglect of the Employer, his agents, servants or other contractors, done or committed during the validity of the Contract.

## **23. LIABILITY INSURANCE**

### **23.1. Obligation to take out Liability Insurance**

Before commencing the execution of the Works, but without limiting his obligations and responsibility under Clause 20 hereof, the Contractor shall insure against his liability for any death, material or physical damage, loss or injury which may occur to any property, including that of the Employer or to any person, including any employee of the Employer by or arising out of the execution of the Works or in the carrying out of the Contract, other than due to the matters referred to in the proviso to Clause 22 hereof.

### **23.2. Minimum Amount of Liability Insurance**

Such insurance shall be effected with an insurer and in terms approved by the Employer, which approval shall not be unreasonably withheld, and for at least the amount specified in the contract. The Contractor shall, whenever required by the Employer or the Engineer, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

### **23.3. Provision to Indemnify Employer**

The insurance policy shall include a provision whereby, in the event of any claim in respect of which the Contractor would be entitled to receive indemnity under the policy, being brought or made against the Employer, the insurer shall indemnify the Employer against such claims and any costs, charges and expenses in respect thereof.

## **24. ACCIDENT OR INJURY TO WORKMEN**

- a) The Employer shall not be liable for or in respect of any damages or compensation payable at law in respect or in consequence of any accident or injury to any workman or other person in the employment of the Contractor or any sub-Contractor, save and except an accident or injury resulting from any act or default of the Employer, his agents or servants. The Contractor shall indemnify, hold and save harmless the Employer against all such damages and compensation, save and except as aforesaid, and against all claims, proceedings, costs, charges and expenses whatsoever in respect thereof or in relation thereto.

- b) Insurance Against Accident, etc., to Workmen

The Contractor shall insure against such liability with an insurer approved by the Employer, which approval shall not be unreasonably withheld, and shall continue such insurance during the whole of the time that any persons are employed by him for the Works and shall, when required, produce to the Engineer such policy of insurance and the receipt for payment of the current premium. Provided always that, in respect of any persons employed by any subcontractor, the Contractor's obligation to insure as aforesaid under this sub-clause shall be satisfied if the subcontractor shall have insured against the liability in respect of such persons in such manner that the Employer is indemnified under the policy but the Contractor shall require such subcontractor to produce to the Engineer when required such policy of insurance and the receipt for the current premium, and obtain the insertion of a provision to that effect in its contract with the subcontractor.

## **25. REMEDY ON CONTRACTOR'S FAILURE TO INSURE**

If the Contractor shall fail to effect and keep in force any of the insurances referred to in Clauses 21, 23 and 24 hereof, or any other insurance which he may be required to effect under the terms of the Contract, the Employer may in any such case effect and keep in force any such insurance and pay such premium as may be necessary for that purpose and from time to time deduct the amount so paid by the Employer as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

## **26. COMPLIANCE WITH STATUTES, REGULATIONS, ETC.**

- a) The Contractor shall give all notices and pay all fees and charges required to be given or paid by any national or State Statutes, Ordinances, Laws, Regulations or By-laws, or any local or other duly constituted authority in relation to the execution of the Works or of any Temporary Works and by the Rules and Regulations of all public bodies and companies whose property or rights are affected or may be affected in any way by the Works or any Temporary Works.
- b) The Contractor shall conform in all respects with any such Statutes, Ordinances, Laws, Regulations, By-laws or requirements of any such local or other authority which may be applicable to the Works and shall keep the Employer indemnified against all penalties and

liabilities of every kind for breach of any such Statutes, Ordinances, Laws, Regulations, By-laws or requirements.

## **27. FOSSILS, ETC.**

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site of the Works shall as between the Employer and the Contractor be deemed to be the absolute property of the Employer and the Contractor shall take reasonable precautions to prevent his workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the Employer of such discovery and carry out at the expense of the Employer the Engineer's orders as to the disposal of the same.

## **28. COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS, AND ROYALTIES**

- a) The Contractor shall hold harmless and fully indemnify the Employer from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any Plant, equipment, machine, work or material used for or in connection with the Works or Temporary Works and from and against all claims, demands proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.
- b) Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works.

## **29. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES**

All operations necessary for the execution of the Works and for the Construction of any Temporary Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience, or the access to, use and occupation of, public or private roads and footpaths to or of properties whether in the possession of the Employer or of any other person. The Contractor shall hold harmless and indemnify the Employer in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters in so far as the Contractor is responsible therefor.

## **30. EXTRAORDINARY TRAFFIC AND SPECIAL LOADS**

- a) The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited as

far as reasonably possible and so that no unnecessary damage may be occasioned to such roads and bridges.

- b) Should it be found necessary for the Contractor to move any load of Constructional Plant, machinery, preconstructed units or parts of units of work, or other thing, over part of a road or bridge, the moving whereof is likely to damage any such road or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such road or bridge, save insofar as the Contract otherwise provide, be responsible for and shall pay for the cost of strengthening any such bridge or altering or improving any such road to avoid such damage, and the Contractor shall indemnify and keep the Employer indemnified against all claims for damage to any such road or bridge caused by such movement, including such claim as may be made directly against the Employer, and shall negotiate and pay all claims arising solely out of such damage.

### **31. OPPORTUNITIES FOR OTHER CONTRACTORS**

The Contractor shall in accordance with the requirements of the Engineer afford all reasonable opportunities for carrying out their work to any other contractors employed by the Employer and their workmen and to the workmen of the Employer and of any other duly constituted authorities who may be employed in the execution on or near the Site of any work not included in the Contract or of any contract which the Employer may enter into in connection with or ancillary to the Works. If work by other contractors of the Employer as above-mentioned involves the Contractor in any direct expenses as a result of using his Site facilities, the Employer shall consider payment to the Contractor of such sum or sums as may be recommended by the Engineer.

### **32. CONTRACTOR TO KEEP SITE CLEAN**

During the progress of the Works, the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any Constructional Plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

### **33. CLEARANCE OF SITE ON SUBSTANTIAL COMPLETION**

On the substantial completion of the Works, the Contractor shall clear away and remove from the Site all Constructional Plant surplus materials, rubbish and Temporary Works of every kind and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

### **34. LABOUR**

#### **34.1 Engagement of Labour**

The Contractor shall make his own arrangements for the engagement of all labour local or otherwise.

### **34.2 Supply of Water**

The Contractor shall provide on the Site to the satisfaction of the Engineer an adequate supply of drinking and other water for the use of the Contractor's staff and work people.

### **34.3 Alcoholic Drinks or Drugs**

The Contractor shall comply with Government laws and regulations and orders in force as regards the import, sale, barter or disposal of alcoholic drinks or narcotics and he shall not allow or facilitate such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

### **34.4 Arms and Ammunition**

The restrictions specified in clause 34.3 above shall include all kinds of arms and ammunition.

### **34.5 Holiday and Religious Customs**

The Contractor shall in all dealings with labour in his employ have due regard to all holiday, recognized festivals and religious or other customs.

### **34.6 Epidemics**

In the event of any outbreak of illness of an epidemic nature the Contractor shall comply with and carry out such regulations, orders, and requirements as may be made by the Government or the local medical or sanitary authorities for the purpose of dealing with and overcoming the same.

### **34.7 Disorderly Conduct, etc.**

The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst his employees and for the preservation of peace and the protection of persons and property in the neighborhood of the Works against the same.

### **34.8 Observance by Sub-Contractors**

The Contractor shall be considered responsible for the observance of the above provisions by his Sub-Contractors.

### **34.9 Legislation applicable to Labour**

The Contractor shall abide by all applicable legislation and regulation with regard to labour.



### **35 RETURNS OF LABOUR, PLANT, ETC.**

The Contractor shall, if required by the Engineer, deliver to the Engineer at his office, a return in detail in the form and at such intervals as the Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting Constructional plant as the Engineer may require.

### **36 MATERIALS, WORKMANSHIP AND TESTING**

#### **36.1 Materials and Workmanship**

- a) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer. All testing equipment and instruments provided by the Contractor shall be used only by the Engineer or by the Contractor in accordance with the instructions of the Engineer.
- b) No material not conforming with the Specifications in the Contract may be used for the Works without prior written approval of the Employer and instruction of the Engineer, provided always that if the use of such material results or may result in increasing the Contract Price, the procedure in Clause 48 shall apply.

#### **36.2 Cost of Samples**

All samples shall be supplied by the Contractor at his own cost unless the supply thereof is clearly intended in the Specifications or Bill of Quantities to be at the cost of the Employer. Payment will not be made for samples which do not comply with the Specifications.

#### **36.3 Cost of Tests**

The Contractor shall bear the costs of any of the following tests:

- a) Those clearly intended by or provided for in the Contract Documents.
- b) Those involving load testing or tests to ensure that the design of the whole of the Works or any part of the Works is appropriate for the purpose which it was intended to fulfill.

### **37 ACCESS TO SITE**

The Employer and the Engineer and any persons authorized by either of them shall, at all times, have access to the Works and to the Site and to all workshops and places where work is being prepared or whence materials, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

### **38 EXAMINATION OF WORK BEFORE COVERING UP**

No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay unless he considers it unnecessary and advises the Contractor accordingly attend for the purpose of examining and measuring such work or of examining such foundations.

### **39 REMOVAL OF IMPROPER WORK AND MATERIALS**

#### **39.1 Engineer's power to order removal**

The Engineer shall during the progress of the Works have power to order in writing from time to time, and the Contractor shall execute at his cost and expense, the following operations:

- a) The removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;
- b) The substitution of proper and suitable materials; and
- c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

#### **39.2 Default of Contractor in carrying out Engineer's Instructions**

In case of default on the part of the Contractor in carrying out an instruction of the Engineer, the Employer shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor and shall be recoverable from him by the Employer and may be deducted by the Employer from any monies due or which may become due to the Contractor.

### **40 SUSPENSION OF WORK**

The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider

necessary and shall, during such suspension, properly protect and secure the Works so far as it is necessary in the opinion of the Engineer. The Employer should be notified and his written approval should be sought for any suspension of work in excess of three (3) days.

## **41 POSSESSION OF SITE**

### **41.1 Access to Site**

The Employer shall with the Engineer's written order to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the Programme referred to in Clause 13 hereof and otherwise in accordance with such reasonable proposals of the Contractor as he shall make to the Engineer by notice in writing, and shall from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works with due dispatch in accordance with the said Programme or proposals, as the case may be.

### **41.2 Wayleaves, etc.**

The Contractor shall bear all expenses and charges for special temporary wayleaves required by him in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by him for the purpose of the Works.

### **41.3 Limits of the Site**

Except as defined below, the limits of the Site shall be as defined in the Contract. Should the Contractor require land beyond the Site, he shall provide it entirely at his own expense and before taking possession shall supply the Engineer with a copy of the necessary permits. Access to the Site is available where the Site adjoins a public road but it is not provided unless shown on the Drawings. When necessary for the safety and convenience of workmen, public or livestock or for the protection of the Works, the Contractor shall, at his own expense, provide adequate temporary fencing to the whole or part of the Site. The Contractor shall not disturb, damage or pull down any hedge, tree or building within the Site without the written consent of the Engineer.

## **42 TIME FOR COMPLETION**

- a) Subject to any requirement in the Contract as to completion of any section of the Works before completion of the whole, the whole of the Works shall be completed, in accordance with the provisions of Clause 46 and 47 hereof, within the time stated in the Contract.
- b) The completion time includes weekly rest days, official holidays, and days of inclement weather.

#### **43 EXTENSION OF TIME FOR COMPLETION**

If, subject to the provisions of the Contract, the Engineer orders alterations or additions in the Works in accordance with Clause 48 hereof, or if circumstances constituting force majeure as defined in the Contract have occurred, the Contractor shall be entitled to apply for an extension of the time for completion of the Works specified in the Contract. The Employer shall, upon such application, determine the period of any such extension of time; provided that in the case of alterations or additions in the Works, the application for such an extension must be made before the alterations or additions in the Works are undertaken by the Contractor.

#### **44 RATE OF PROGRESS**

The whole of the materials, plant and labour to be provided by the Contractor and the mode, manner and speed of execution and completion of the Works are to be of a kind and conducted in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day, then, if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment. All work at night shall be carried out without unreasonable noise and disturbance. The contractor shall indemnify the Employer from and against any claims or liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands, proceedings, costs and expenses whatsoever in regard or in relation to such noise or other disturbance. The Contractor shall submit in triplicate to the Engineer at the end of each month signed copies of explanatory Drawings or any other material showing the progress of the Works.

#### **45 LIQUIDATED DAMAGES FOR DELAY**

- a) If the Contractor shall fail to complete the Works within the time for completion prescribed in the Contract, or any extended time for completion in accordance with the Contract, then the Contractor shall pay to the Employer the sum specified in the Contract as liquidated damages, for the delay between the time prescribed in the Contract or the extended time for completion, as the case may be, and the date of substantial completion of the Works as stated in the Certificate of Substantial Completion, subject to the applicable limit stated in the Contract. The said sum shall be payable by the sole fact of the delay without the need for any previous notice or any legal proceedings, or proof of damage, which shall in all cases be considered as ascertained. The Employer may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies in its hands due or which may become due to the Contractor. The payment or deduction of such damages shall

not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.

- b) If, before the time for completion of the whole of the Works or of a Section of the Works, a Certificate of Substantial Completion has been issued for any part or Section of the Works, the liquidated damages for delay in completion of the remainder of the Works or of that Section may, for any period of delay after the date stated in such Certificate of Substantial Completion, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part or Section so certified bears to the total value of the whole of the Works or Section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

## **46 CERTIFICATE OF SUBSTANTIAL COMPLETION**

### **46.1 Substantial Completion of the Works**

When the whole of the Works have been substantially completed and have satisfactorily passed any test on completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer accompanied by an undertaking to finish any outstanding work during the Defects Liability Period. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor, for the Engineer to issue a Certificate of Substantial Completion in respect of the Works. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the Employer, a Certificate of Substantial Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issuance of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the work specified therein. The Contractor shall be entitled to receive such Certificate of Substantial Completion within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the work so specified and making good any defect so notified. Upon issuance of the Certificate of Substantial Completion of the Works, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work during the Defects Liability Period.

### **46.2 Substantial Completion of Sections or Parts of the Works**

In accordance with the procedure in Sub-Clause (1) of this Clause and on the same conditions as provided therein, the Contractor may request the Engineer to issue, and the Engineer may issue, a Certificate of Substantial Completion in respect of any Section or part of the Works which has been substantially completed and has satisfactorily passed any tests on completion prescribed by the Contract, if:

- a) a separate time for completion is provided in the Contract in respect of such Section or part of the Works;

- b) Such Section or part of the Works has been completed to the satisfaction of the Engineer and is required by the Employer for his occupation or use.

Upon the issuance of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work during the Defects Liability Period.

## **47 DEFECTS LIABILITY**

### **47.1 Defects Liability Period**

The expression "Defects Liability Period" shall mean the period of twelve (12) months, calculated from the date of completion of the Works stated in the Certificate of Substantial Completion issued by the Engineer or, in respect of any Section or part of the Works for which a separate Certificate of Substantial Completion has been issued, from the date of completion of that Section or part as stated in the relevant Certificate. The expression "the Works" shall, in respect of the Defects Liability Period, be construed accordingly.

### **47.2 Completion of Outstanding Work and Remedying of Defects**

During the Defects Liability Period, the Contractor shall finish the work, if any, outstanding at the date of the Certificate of Substantial Completion, and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Defects Liability Period and within fourteen (14) days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to expiration of the Defects Liability Period.

### **47.3 Cost of Execution of Work of Repair, etc.**

All such outstanding work shall be carried out by the Contractor at his own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of material or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied, on the Contractor's part under the Contract.

### **47.4 Remedy on Contractor's Failure to Carry Out Work Required**

If the Contractor shall fail to do any such work outstanding on the Works, the Employer shall be entitled to employ and pay other persons to carry out the same, and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the Employer, and may be deducted by the Employer from any monies due or which may become due to the Contractor.

### **47.5 Certificate of Final Completion**

Upon satisfactory completion of the work outstanding on the Works, the Engineer shall within twenty eight (28) days of the expiration of the Defects Liability period issue a Certificate of Final Completion to the Contractor. The Contract shall be deemed to be completed upon issuance of such Certificate, provided that the provisions of the Contract which remain unperformed and the Settlement of Disputes provision in the Contract shall remain in force for as long as is necessary to dispose of any outstanding matters or issues between the Parties.

## **48 ALTERATIONS, ADDITIONS AND OMISSIONS**

### **1 Variations**

The Engineer may within his powers introduce any variations to the form, type or quality of the Works or any part thereof which he considers necessary and for that purpose or if for any other reasons it shall, in his opinion be desirable, he shall have power to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work under the Contract;
- (b) omit any such work;
- (c) change the character or quality or kind of any such work;
- (d) change the levels, lines, positions and dimensions of any part of the Works;
- (e) execute additional work of any kind necessary for the completion of the Works, and no such variation shall in any way vitiate or invalidate the Contract.

### **2 Variations Increasing Cost of Contract or altering the Works.**

The Engineer shall, however, obtain the written approval of the Employer before giving any order for any variations which may result in an increase of the Contract Price or in an essential alteration of the quantity, quality or character of the Works.

### **3 Orders for Variations to be in Writing**

No variations shall be made by the Contractor without an order in writing from the Engineer. Variations requiring the written approval of the Employer under paragraph (2) of this Clause shall be made by the Contractor only upon written order from the Engineer accompanied by a copy of the Employer's approval. Provided that, subject to the provisions of the Contract, no order in writing shall be required for any increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

#### **4 Valuation of Variations**

The Engineer shall estimate to the Employer the amount to be added or deducted from the Contract Price in respect of any variation, addition or omission. In the case of any variation, addition or omission which may result in an increase of the Contract Price, the Engineer shall communicate such estimate to the Employer together with his request for the Employer's written approval of such variation, addition or omission. The value of any variation, addition or omission shall be calculated on the basis of the unit prices contained in the Bill of Quantities.

#### **49 PLANT, TEMPORARY WORKS AND MATERIALS**

##### **1 Plant, etc., Exclusive Use for the Works**

All Constructional Plant, Temporary Works and Materials provided by the Contractor shall, when brought on the Site, be deemed to be exclusively intended for the construction and completion of the Works and the Contractor shall not remove the same or any part thereof (save for the purpose of moving it from one part of the Site to another) without the consent in writing of the Engineer which shall not be unreasonably withheld.

##### **2 Removal of Plant, etc.**

Upon completion of the Works the Contractor shall remove from the Site all the said Constructional Plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

##### **3 Employer not liable for Damage to Plant**

The Employer shall not be at any time liable for the loss of any of the said Constructional plant, Temporary Works or Materials save if such loss results from the act or neglect of the Employer, its employees or agents.

##### **4 Ownership of paid material and work**

All material and work covered by payments made by the Employer to the Contractor shall thereupon become the sole property of the Employer, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made or the restoration of any damaged work or as waiving the right of the Employer to require the fulfillment of all of the terms of the Contract.

##### **5 Equipment and supplies furnished by Employer**

Title to any equipment and supplies which may be furnished by the Employer shall rest with the Employer and any such equipment and supplies shall be returned to the Employer at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment



when returned to the Employer, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear.

## **50 APPROVAL OF MATERIALS ETC., NOT IMPLIED**

The operation of Clause 49 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

## **51 MEASUREMENT OF WORKS**

The Engineer shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor or the Contractor's authorized agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer in making such measurement and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. The purpose of measuring is to ascertain the volume of work executed by the Contractor and therefore determine the amount of the monthly payments.

## **52 LIABILITY OF THE PARTIES**

- 1** The Works shall not be considered as completed until a Certificate of Final Completion shall have been signed by the Engineer and delivered to the Employer stating that the Works have been completed and that the Contractor has fulfilled all his obligations under Clause 47 to his satisfaction.
- 2** The Employer shall not be liable to the Contractor for any matter arising out of or in connection with the Contract or the execution of the Works unless the Contractor shall have made a claim in writing in respect thereof before the giving of the Certificate of Final Completion and in accordance with the Contract.

### **3 Unfulfilled Obligations**

Notwithstanding the issue of the Certificate of Final Completion, the Contractor shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issuance of the Certificate of Final Completion and which remains unperformed at the time such Certificate is issued. For the purpose of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

### **4 Contractor Responsible**

Notwithstanding any other provisions in the Contract documents, the Contractor shall be totally responsible for and shall bear any and all risks of loss or damage to or failure of the Works or any part thereof for a period of ten years after issuance of the Certificate of Final Completion, provided always that such risks, damage or failure result from acts, defaults and negligence of the Contractor, his agents, employees or workmen and such contractors.

### **53 AUTHORITIES**

- 1** The Employer shall have the right to enter upon the Site and expel the Contractor therefrom without thereby voiding the Contract or releasing the Contractor from any of his obligations or liabilities under the Contract or affecting the rights and powers conferred on the Employer and the Engineer by the Contract in any of the following cases:
  - (a) If the Contractor is declared bankrupt or claims bankruptcy or court protection against his creditors or if the Contractor is a company or member of a company which was dissolved by legal action;
  - (b) If the Contractor makes arrangements with his creditors or agrees to carry out the Contract under an inspection committee of his creditors;
  - (c) If the Contractor withdraws from the Works or assigns the Contract to others in whole or in part without the Employer's prior written approval;
  - (d) If the Contractor fails to commence the Works or shows insufficient progress to the extent which in the opinion of the Engineer will not enable him to meet the target completion date of the Works;
  - (e) If the Contractor suspends the progress of the Works without due cause for fifteen (15) days after receiving from the Engineer written notice to proceed;
  - (f) If the Contractor fails to comply with any of the Contract conditions or fails to fulfill his obligations and does not remedy the cause of his failure within fifteen (15) days after being notified to do so in writing;
  - (g) If the Contractor is not executing the work in accordance with standards of workmanship specified in the Contract;
  - (h) If the Contractor gives or promises to give a present or loan or reward to any employee of the Employer or of the Engineer.

Then the Employer may himself complete the Works or may employ any other contractor to complete the Works and the Employer or such other contractor may use for such completion so much of Constructional Plant, Temporary Works and Materials, which have been deemed to be reserved exclusively for the construction and completion of the Works under the provision of the Contract as he or they may think proper and the Employer may at any time

sell any of the said Constructional Plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

## **2 Evaluation after Re-entry**

The Engineer shall as soon as may be practicable after any such entry and expulsion by the Employer notify the Contractor to attend the necessary evaluation of the Works. In the event that for any reason the Contractor does not attend such evaluation the Engineer shall undertake the said evaluation in the absence of the Contractor and shall issue a certificate stating the sum, if any, due to the Contractor for work done in accordance with the Contract up to the time of entry and expulsion by the Employer which has been reasonably accumulated to the Contractor in respect of the Works he has executed in such case in accordance with the Contract. The Engineer shall indicate the value of the materials whether unused or partially used and the value of construction equipment and any part of the Temporary Works.

## **3 Payment After Re-entry**

If the Employer shall enter and expel the Contractor under this Clause he shall not be liable to pay the Contractor any money on account of the Contract until the expiration of the Defects Liability Period, and thereafter until the costs of completion and making good any defects of the Works, damages for delay in completion (if any), and all other expenses incurred by the Employer have been ascertained and their amount certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall upon demand pay to the Employer the amount of such excess. The Employer in such case may recover this amount from any money due to the Contractor from the Employer without the need to resort to legal procedures.

## **54 URGENT REPAIRS**

If by reason of any accident or failure or other event occurring to, in or in connection with the Works or any part thereof either during the execution of the Works or during the Defects Liability Period any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair, the Employer may by his own or other workmen do such work or repair as the Engineer may consider necessary. If the work or repair so done by the Employer is work which in the opinion of the Engineer the Contractor was liable to do at his own expense under the Contract, all costs and charges properly incurred by the Employer in so doing shall on demand be paid by the Contractor to the Employer or may be deducted by the Employer from any monies due or which may become due to the Contractor provided always that the

Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

## **55 INCREASE AND DECREASE OF COSTS**

Except if otherwise provided by the Contract, no adjustment of the Contract Price shall be made in respect of fluctuations of market, prices of labour, materials, plant or equipment, neither due to fluctuation in interest rates nor devaluation or any other matters affecting the Works.

## **56 TAXATION**

The Contractor shall be responsible for the payment of all charges and taxes in respect of income including value added tax, all in accordance with and subject to the provisions of the income tax laws and regulations in force and all amendments thereto. It is the Contractor's responsibility to make all the necessary inquiries in this respect and he shall be deemed to have satisfied himself regarding the application of all relevant tax laws.

## **57 BLASTING**

The Contractor shall not use any explosives without the written permission of the Engineer who shall require that the Contractor has complied in full with the regulations in force regarding the use of explosives. However, the Contractor, before applying to obtain these explosives, has to provide well arranged storage facilities. The Engineer's approval or refusal to permit the use of explosives shall not constitute ground for claims by the Contractor.

## **58 MACHINERY**

The Contractor shall be responsible for coordinating the manufacture, delivery, erection and commissioning of plant machinery and equipment which are to form a part of the Works. He shall place all necessary orders as soon as possible after the signing of the Contract. These orders and their acceptance shall be produced to the Engineer on request. The Contractor shall also be responsible for ensuring that all sub-contractors adhere to such programs as are agreed and are needed to ensure completion of the Works within the period for completion. Should any sub-contracted works be delayed, the Contractor shall initiate the necessary action to speed up such completion. This shall not prejudice the Employer's right to exercise his remedies for delay in accordance with the Contract.

## **59 TEMPORARY WORKS AND REINSTATEMENT**

The Contractor shall provide and maintain all temporary roads and tracks necessary for movement of plant and materials and clear same away at completion and make good all works damaged or disturbed. The Contractor shall submit drawings and full particulars of all Temporary Works to the Engineer before commencing same. The Engineer may require modifications to be made if he considers them to be insufficient and the Contractor shall give effect to such modifications but shall not be relieved of his responsibilities. The Contractor shall provide and maintain weather-proof sheds for storage of material pertinent to the Works both for his own use and for the use of the Employer and clear same away at the completion of the Works. The Contractor shall divert as required, at his own cost and subject to the approval of the Engineer, all public utilities encountered during the progress of the Works, except those specially indicated on the drawings as being included in the Contract. Where diversions of services are not required in connection with the Works, the Contractor shall uphold, maintain and keep the same in working order in existing locations. The Contractor shall make good, at his own expense, all damage to telephone, telegraph and electric cable or wires, sewers, water or other pipes and other services, except where the Public Authority or Private Party owning or responsible for the same elects to make good the damage. The costs incurred in so doing shall be paid by the Contractor to the Public Authority or Private Party on demand.

## **60 PHOTOGRAPHS AND ADVERTISING**

The Contractor shall not publish any photographs of the Works or allow the Works to be used in any form of advertising whatsoever without the prior approval in writing from the Employer.

## **61 PREVENTION OF CORRUPTION**

The Employer shall be entitled to cancel the Contract and to recover from the Contractor the amount of any loss resulting from such cancellation, if the Contractor has offered or given any person any gift or consideration of any kind as an inducement or reward for doing or intending to do any action in relation to the obtaining or the execution of the Contract or any other contract with the Employer or for showing or intending to show favour or disfavour to any person in relation to the Contract or any other contract with the Employer, if the like acts shall have been done by any persons employed by him or acting on his behalf whether with or without the knowledge of the Contractor in relation to this or any other Contract with the Employer.

## **62 DATE FALLING ON HOLIDAY**

Where under the terms of the Contract any act is to be done or any period is to expire upon a certain day and that day or that period fall on a day of rest or recognized holiday, the Contract shall have effect as if the act were to be done or the period to expire upon the working day following such day.

## **63 NOTICES**

- 1** Unless otherwise expressly specified, any notice, consent, approval, certificate or determination by any person for which provision is made in the Contract Documents shall be in writing. Any such notice, consent, approval, certificate or determination to be given or made by the Employer, the Contractor or the Engineer shall not be
- 2** unreasonably withheld or delayed.
- 3** Any notice, certificate or instruction to be given to the Contractor by the Engineer or the Employer under the terms of the Contract shall be sent by post, cable, telex or facsimile at the Contractor's principal place of business specified in the Contract or such other address as the Contractor shall nominate in writing for that purpose, or by
- 4** delivering the same at the said address against an authorized signature certifying the receipt.
- 5** Any notice to be given to the Employer under the terms of the Contract shall be sent by post, cable, telex or facsimile at the Employer's address specified in the Contract, or by delivering the same at the said address against an authorized signature certifying the receipt.
- 6** Any notice to be given to the Engineer under the terms of this Contract shall be sent by post, cable, telex or facsimile at the Engineer's address specified in the Contract, or by delivering the same at the said address against an authorized signature certifying the receipt.

## **64 LANGUAGE, WEIGHTS AND MEASURES**

Except as may be otherwise specified in the Contract, English shall be used by the Contractor in all written communications to the Employer or the Engineer with respect to the services to be rendered and with respect to all documents procured or prepared by the Contractor pertaining to the Works. The metric system of weights and measures shall be used in all instances.

## **65 RECORDS, ACCOUNTS, INFORMATION AND AUDIT**

The Contractor shall maintain accurate and systematic records and accounts in respect of the work performed under this Contract.

The Contractor shall furnish, compile or make available at all times to the UNHCR any records or information, oral or written, which the UNHCR may reasonably request in respect of the Works or the Contractor's performance thereof.

The Contractor shall allow the UNHCR or its authorized agents to inspect and audit such records or information upon reasonable notice.

## **66 FORCE MAJEURE**

Force majeure as used herein means Acts of God, war (whether declared or not), invasion, revolution, insurrection or other acts or events of a similar nature or force.

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNHCR and to the Engineer of such force majeure if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. Subject to acceptance by the UNHCR of the existence of such force majeure, which acceptance shall not be unreasonably withheld, the following provisions shall apply:

- (a) The obligations and responsibilities of the Contractor under this Contract shall be suspended to the extent of his inability to perform them and for as long as such inability continues. During such suspension and in respect of work suspended, the Contractor shall be reimbursed by the UNHCR substantiated costs of maintenance of the Contractor's equipment and of per diem of the Contractor's permanent personnel rendered idle by such suspension;
- (b) The Contractor shall within fifteen (15) days of the notice to the UNHCR of the occurrence of the force majeure submit a statement to the UNHCR of estimated costs referred to in sub-paragraph (a) above during the period of suspension followed by a complete statement of actual expenditures within thirty (30) days after the end of the
- (c) suspension;
- (d) The term of this Contract shall be extended for a period equal to the period of suspension taking however into account any special condition which may cause the additional time for completion of the Works to be different from the period of suspension;
- (e) If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure, to perform his obligations and meet his responsibilities under the Contract, the UNHCR shall have the right to terminate the Contract on the same terms and conditions as provided for in Clause 68 of these General Conditions, except that the period of notice shall be seven (7) days instead of fourteen (14) days, and
- (f) For the purpose of the preceding sub-paragraph, the UNHCR may consider the Contractor permanently unable to perform in case of any suspension period of more than ninety (90) days.

## **67 SUSPENSION BY THE UNHCR**

The UNHCR may by written notice to the Contractor suspend for a specified period, in whole or in part, payments to the Contractor and/or the Contractor's obligation to continue to perform the Works under this Contract, if in the UNHCR's sole discretion:

- (a) any conditions arise which interfere, or threaten to interfere with the successful execution of the Works or the accomplishment of the purpose thereof, or
- (b) the Contractor shall have failed, in whole or in part, to perform any of the terms and conditions of this Contract.

After suspension under sub-paragraph (a) above, the Contractor shall be entitled to reimbursement by the UNHCR of such costs as shall have been duly incurred in accordance with this Contract prior to the commencement of the period of such suspension.

The term of this Contract may be extended by the UNHCR for a period equal to any period of suspension, taking into account any special conditions which may cause the additional time for completion of the Works to be different from the period of suspension.

## **68 TERMINATION BY THE UNHCR**

The UNHCR may, notwithstanding any suspension under Clause 67 above, terminate this Contract for cause or convenience in the interest of the UNHCR upon not less than fourteen (14) days written notice to the Contractor.

Upon termination of this Contract:

- (a) The Contractor shall take immediate steps to terminate his performance of the Contract in a prompt and orderly manner and to reduce losses and to keep further expenditures to a minimum, and
- (b) The Contractor shall be entitled (unless such termination has been occasioned by the Contractor's breach of this Contract), to be paid for the part of the Works satisfactorily completed and for the materials and equipment properly delivered to the Site as of the date of termination for incorporation to the Works, plus substantiated costs resulting from commitments entered into prior to the date of termination as well as any reasonable substantiated direct costs incurred by the Contractor as a result of the termination, but shall not be entitled to receive any other or further payment or damages.

## **69 TERMINATION BY THE CONTRACTOR**

In the case of any alleged breach by the UNHCR of the Contract or in any other situation which the Contractor reasonably considers to entitle him to terminate his performance of the Contract, the Contractor shall promptly give written notice to the UNHCR detailing the nature and the circumstances of the breach or other situation. Upon acknowledgement in writing by the UNHCR of the existence of such breach and the UNHCR's inability to remedy it, or upon failure of the UNHCR to respond to such notice within twenty (20) days of receipt thereof, the Contractor shall be entitled to terminate this Contract by giving 30 days written notice thereof. In the event of disagreement between the Parties as to the existence of such



breach or other situation referred to above, the matter shall be resolved in accordance with Clause 71 of these General Conditions.

Upon termination of this Contract under this Clause the provisions of sub-paragraph (b) of Clause 68 hereof shall apply.

## **70 RIGHTS AND REMEDIES OF THE UNHCR**

Nothing in or relating to this Contract shall be deemed to prejudice or constitute a waiver of any other rights or remedies of the UNHCR.

The UNHCR shall not be liable for any consequences of, or claim based upon, any act or omission on the part of the Government.

## **71 SETTLEMENT OF DISPUTES**

In the case of any claim, controversy or dispute arising out of, or in connection with this Contract or any breach thereof, the following procedure for resolution of such claim, controversy or dispute shall apply.

### **1 Notification**

The aggrieved party shall immediately notify the other party in writing of the nature of the alleged claim, controversy or dispute, not later than seven (7) days from awareness of the existence thereof.

### **2 Consultation**

On receipt of the notification provided above, the representatives of the Parties shall start consultations with a view to reaching an amicable resolution of the claim, controversy or dispute without causing interruption of the Works.

### **3 Conciliation**

Where the representatives of the Parties are unable to reach such an amicable settlement, either party may request the submission of the matter to conciliation in accordance with the UNCITRAL Rules of Conciliation then obtaining.

### **4 Arbitration**

Any claim, controversy or dispute which is not settled as provided under clauses 71.1 through 3 above shall be referred to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The Parties shall be bound by the arbitration award

rendered in accordance with such arbitration as the final adjudication of any such controversy or claim.

## **72 PRIVILEGES AND IMMUNITIES**

Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of the United Nations of which the UNHCR is an integral part.

## **APPENDIX I: FORMATS OF PERFORMANCE SECURITY**

## PERFORMANCE BANK GUARANTEE

To:.....

[INSERT FULL NAME AND ADDRESS OF RR or BUREAU/DIVISION  
DIRECTOR AT UNHCR]

WHEREAS.....[INSERT NAME AND  
ADDRESS OF THE CONTRACTOR] (hereinafter called "the Contractor") has undertaken, in  
pursuance of Contract No....., dated....., to  
execute.....[INSERT TITLE OF CONTRACT AND  
BRIEF DESCRIPTION OF WORKS], (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall  
furnish you with a Bank Guarantee by a recognized Bank for the sum specified therein as  
security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby irrevocably affirm that we are the Guarantor and responsible to  
you, on behalf of the Contractor, up to a total of.....[INSERT AMOUNT  
OF GUARANTEE IN FIGURES AND IN WORDS], such sum being payable in the types and  
proportions of currencies in which the Contract Price is payable, and we undertake to pay you,  
upon your first written demand and without cavil or argument, any sum or sums within the limits  
of .....[INSERT AMOUNT OF GUARANTEE] as aforesaid without  
your needing to prove or to show grounds or reasons for your demand for the sum specified  
therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before  
presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract  
or of the Works to be performed thereunder or of any of the Contract Documents which may be  
made between you and the Contractor shall in any way release us from any liability under this  
guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until twenty eight calendar days after issuance of the Certificate of  
Final Completion.

SIGNATURE AND SEAL OF THE GUARANTOR

.....

NAME OF BANK .....

ADDRESS .....

DATE .....

## PERFORMANCE BOND

By this Bond .....[INSERT NAME AND ADDRESS OF THE CONTRACTOR] as Principal (hereinafter called "the Contractor") and .....[INSERT NAME, LEGAL TITLE AND ADDRESS OF SURETY, BONDING COMPANY OR INSURANCE COMPANY] as Surety (hereinafter called "the Surety") are held and firmly bound unto .....[INSERT NAME AND ADDRESS OF EMPLOYER] as Obligee (hereinafter called "the Employer") in the amount of. ....[INSERT AMOUNT OF BOND IN FIGURES AND IN WORDS], for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a contract with the Employer dated for ..... [INSERT TITLE OF CONTRACT AND BRIEF DESCRIPTION OF THE WORKS] in accordance with the documents, plans, specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto) then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be , and declared by the Employer to be, in default under the Contract, the Employer having performed the Employer's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

(1) complete the Contract in accordance with its terms and conditions; or

(2) obtain a bid or bids from qualified Bidders for submission to the Employer for completing the Contract in accordance with its terms and conditions, and upon determination by the Employer and the Surety of the lowest responsible Bidder, arrange for a Contract between such Bidder and Employer and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term " Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by Employer to Contractor under the Contract, less the amount properly paid by Employer to Contractor; or

(3) pay the Employer the amount required by Employer to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the Employer named herein or the heirs, executors, administrators, successors and assigns of the Employer.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this.....day of.....2006

SIGNED ON:

SIGNED ON:

ON BEHALF OF:

ON BEHALF OF:

NAME &TITLE:

NAME &TITLE: