

1 ACCEPTANCE OF PURCHASE ORDER AND CONTRACTUAL TERMS AND CONDITIONS

Acceptance of this Purchase Order by the Vendor shall effect a contract between the Parties. The rights and obligations of the Parties shall be governed solely by the terms and conditions of this Purchase Order, which shall include the United Nations General Conditions of Contract (UNGCC) *De Minimis* Field Contracts, a copy of which is incorporated by reference into this Purchase Order and may be found on the website of the United Nations Procurement Division (https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/general_condition_field_contracts.pdf) and agreed attachments, if any (hereinafter collectively referred to as "this Purchase Order" or "PO"). The Parties agree the UNGCC shall apply, with the exception of Article 4 on Subcontracting, and form an integral part of this Purchase Order.

This Purchase Order may only be accepted by the Vendor's signing and returning an acknowledgment copy of it or by timely delivery of the goods and/or service as herein specified.

No additional or inconsistent provisions proposed by the Vendor shall bind WFP unless agreed to in writing by a duly authorized official of the United Nations.

2 DELIVERY TIME

The Vendor shall deliver the goods or services within the 'Date Due' stated on this Purchase Order.

3 PAYMENT

Payment by WFP does not imply acceptance of the goods nor any related work or services under the Purchase Order. Unless otherwise provided in the Purchase Order, WFP shall make payment within 30 days of receipt of the Vendor's invoice for the goods or services, proof of dispatch and any other documents specified in the Purchase Order. Payment against the invoice referred to above will reflect any discount shown under the payment terms of the Purchase Order, provided payment is made within the period required by such payment terms. The Vendor shall submit one invoice in respect of the Purchase Order, and such invoice must indicate the Purchase Order identification number. The prices shown in the Purchase Order may not be increased except by express, written agreement of WFP.

4 TRADE TERMS

Whenever an INCOTERM is used in the Purchase Order, it shall be interpreted in accordance with the INCOTERMS® 2020 rules. In case of inconsistency between the INCOTERMS® 2020 and the other terms of this Purchase Order, the INCOTERMS® 2020 shall prevail, unless otherwise agreed by the Parties.

5 EXPORT LICENCES

Unless otherwise agreed, the Vendor shall obtain any export licences required for the goods.

6 WARRANTIES

In addition to and without limiting any other warranties, remedies or rights of WFP stated in or arising under the Purchase Order, the Vendor warrants and represents that:

- 6.1 The goods are of the quality, quantity and description required under the Purchase Order and are fit for the purposes for which such goods are ordinarily used and for the purposes expressly made known to the Vendor by WFP;
- 6.2 The goods are securely contained, packaged and marked, taking into consideration the mode(s) of shipment, in a manner so as to protect the goods during delivery to their final destination;
- 6.3 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;
- 6.4 The goods are new and unused, of current manufacture and are free from defects in design, workmanship and materials;
- 6.5 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 WFP in accordance with the Purchase Order;

During any period in which the Vendor's warranties are effective, upon notice by WFP that the goods do not conform to the requirements of the Purchase Order, the Vendor 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 WFP for the purchase price paid for the defective goods.

7 INSPECTION

If the Purchase Order provides that the goods may be inspected prior to delivery, the Vendor shall notify WFP when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, WFP 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 Purchase Order. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to the United Nations 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 Vendor of any of its warranties or the performance of any obligations under the Purchase Order.

8 RIGHTS OF WFP

In case of failure by the Vendor to fulfil its obligations under the terms and conditions of the Purchase Order, including, but not limited to, failure to obtain necessary export licences, or to make delivery of all or part of the goods by the agreed delivery date or dates, WFP may, after giving the Vendor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

- 8.1 procure all or part of the goods or services from other sources, in which event WFP may hold the Vendor responsible for any excess cost occasioned thereby;
- 8.2 refuse to accept delivery of all or part of the goods;
- 8.3 terminate the Purchase Order without any liability for termination charges or any other liability of any kind of WFP;
- 8.4 require the Vendor to ship at its own expense, via premium means, to meet the delivery schedule;
- 8.5 impose liquidated damages.

Acceptance of goods delivered late shall not be deemed a waiver of WFP's rights to hold the Vendor liable for any loss and/or damage resulting there from, nor shall it act as a modification of the Vendor's obligation to make future deliveries in accordance with the delivery schedule.

9 REMEDIES FOR LATE DELIVERY AND/OR LATE PERFORMANCE

In case of late delivery of goods and/or the services, WFP shall be entitled, without prejudice to any other rights or remedies, to deduct liquidated damages from monies due to the vendor, equivalent to 0.1 percent (0.1%) of the price of the goods/service per day of delay, up to a maximum of ten percent (10%) of the price of the goods/service.

The Vendor hereby agrees that the payment obligations set forth in this clause are reasonable in light of the anticipated harm and the difficulty of estimation or calculation of actual damages and represent a genuine pre-estimate of WFP's loss. The Vendor hereby waives the right to contest any such payment as void or unenforceable, as amounting to a penalty or otherwise.

10 TITLE RIGHTS

Unless otherwise expressly provided in the Purchase Order, title in and to the goods shall pass from the Vendor to WFP upon delivery of the goods and their acceptance by WFP in accordance with the requirements of the Purchase Order.

11 TERMINATION FOR CONVENIENCE

WFP may terminate the Purchase Order, in whole or in part, upon 30 days' notice to the Vendor. Upon receipt of notice of termination, the Vendor shall take immediate steps to bring the work and services to a close in a prompt and orderly manner, shall reduce expenses to a minimum and shall not undertake any forward commitment from the date of receipt of notice of termination. In the event of Termination for Convenience, no payment shall be due from WFP to the Vendor except for work and services satisfactorily performed prior to termination, for expenses necessary for the prompt and orderly termination of the work and for the cost of such necessary work as WFP may request the Vendor to complete.

12 CHANGES

WFP may, at any time, by written instructions make changes within the general scope of the Purchase Order. If any such change causes an increase or decrease in the price of or the time required for performance pursuant to the Purchase Order, an equitable adjustment shall be made in the order price, or delivery schedule, or both and the Purchase Order shall either be amended or terminated and reissued accordingly. No notification of or change in the terms of the Purchase Order shall be valid or enforceable against WFP unless it is in writing and signed by a duly authorized official of WFP.

13 ANTI-FRAUD, ANTI-CORRUPTION POLICY

13.1 The Contractor acknowledges and agrees that, in accordance with WFP's Anti-Fraud and Anti-Corruption Policy (WFP/EB.A/2021/5-B/1) ("the Policy"), WFP is highly risk averse towards Fraud, Corruption, Theft, Collusive, Coercive, and Obstructive Practices, Money Laundering and Financing of Terrorism (as such terms are defined below) in its activities and operations, and has zero tolerance for inaction.

13.2 The Contractor acknowledges that it and its officers, employees, contractors, subcontractors, agents and affiliates have the duty to act honestly and with integrity in the provision of goods and services to WFP and its partners. The Contractor acknowledges that it has the duty to ensure that WFP resources are safeguarded and used for their intended purposes, as authorized by WFP.

13.3 In particular, and without limitation to paragraph 2, the Contractor represents and warrants to WFP that it has not, and it shall not, at any time:

- (a) perform any act or omit to perform any act, including any misrepresentation, in order to knowingly mislead, or attempt to mislead, WFP and/or any other party to obtain a financial or other advantage, or to avoid any obligation, to benefit itself and/or any other party ("Fraud");

- (b) offer, give, receive or solicit, or attempt to offer, give, receive or solicit, directly or indirectly, anything of value to improperly influence the actions of WFP and/or any other party ("Corruption");
- (c) take anything of value that belongs to WFP and/or another individual or entity without authorization ("Theft");
- (d) enter into any arrangement with any other party or parties that are designed to achieve an improper purpose, including, but not limited to, improperly influencing the actions of WFP and/or any other party ("Collusive Practice");
- (e) impair or harm, or threaten to impair or harm, directly or indirectly, WFP and/or any other party or the property of WFP and/or any other party to influence improperly the actions of a party ("Coercive Practice");
- (f) deliberately destroy, falsify, alter or conceal evidence material to the investigation or making false statements to investigators in order to materially impede a duly authorized investigation into suspected cases of Fraud, Corruption, Theft, Collusive or Coercive Practices, Money Laundering or the Financing of Terrorism; and/or threaten, harass or intimidate WFP and/or any other party in order to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or engage in any act intended to materially impede the exercise of WFP's contractual rights of access to information ("Obstructive Practice");
- (g) convert, transfer, acquire, possess or use property with the knowledge (or where knowledge may be reasonably presumed) that such property is derived from criminal activity or from an act of participation in such activity, including, but not limited to, concealing or disguising the true nature, source, location, disposition, movement, or rights with respect to, or ownership of, such property or aiding, abetting or facilitating such acts ("Money Laundering");
- (h) provide or collect resources, by any means, directly or indirectly, with the intention that they should be used or in the knowledge that they are to be used, in full or in part, to benefit individuals and entities subject to measures imposed by the United Nations Security Council and appearing on the United Nations Security Council Consolidated List ("Financing of Terrorism", and together with Fraud, Corruption, Theft, Collusive Practice, Coercive Practice, Obstructive Practice and Money Laundering, "Prohibited Practices").

13.4 The Contractor shall communicate the Policy to its officers, employees, contractors, subcontractors, agents and affiliates and shall take all reasonable measures to ensure that such persons or entities do not engage in Prohibited Practices. The Contractor shall include equivalent anti-fraud and anti-corruption provisions in its agreements with any subcontractors and/or other agents which are in any way involved in the implementation of any project funded by WFP.

13.5 The Contractor will act on all reasonably suspected cases of any Prohibited Practice in line with the Policy. In particular, the

Contractor shall promptly disclose to WFP (the WFP hotline is available for this purpose) any reasonably suspected Prohibited Practice or any attempt thereof. The Contractor shall fully cooperate, and shall take all reasonable steps to ensure that its officers, employees, contractors, subcontractors, agents and affiliates fully cooperate, with any investigation or review of reasonably suspected Prohibited Practices by WFP or its agents, including by allowing WFP or its agents to access and inspect its premises as well as any records, document and any other information, including financial, electronic and IT records, relevant to its contractual relationship with WFP, including allowing WFP to take copies of any such records, documents or information.

13.6 The Contractor expressly acknowledges and agrees that any breach of this clause by the Contractor or by any of its officers, employees, contractors, subcontractors, agents or affiliates constitutes a material breach of this Agreement, which entitles WFP to immediately terminate this Agreement without incurring any liability to Contractor.

13.7 Furthermore the Contractor expressly acknowledges and agrees that, in the event that WFP were to determine through an investigation or otherwise that a Prohibited Practice occurred, WFP shall have, in addition to its right to immediately terminate the Agreement, the rights to: i) apply and enforce the relevant sanctions in accordance with WFP internal regulations, rules, procedures, practices, policies and guidelines, including, but not limited to, debarment or referral of the matter to relevant national authorities when appropriate; and ii) recover all losses, financial or otherwise, suffered by WFP in connection with such Prohibited Practices, including by withholding relevant amounts from any subsequent disbursements.

14 CONFLICT OF INTEREST

The Vendor warrants that, at the time of accepting this Purchase Order, no conflict of interest exists or is likely to arise in the performance of its obligations under this PO, other than those situations it has disclosed to WFP during the solicitation process.

A conflict of interest shall arise when, in WFP's sole judgement, the Vendor could benefit or appear to benefit, directly or indirectly, at any stage in the Purchase Order from a relationship or arrangement of whatever nature:

- with an official or non-staff personnel of WFP, or;
- with a related vendor or subcontractor who provides to WFP goods and/or services that are directly or indirectly related to the execution of the present Purchase Order.

The following is a non-exhaustive list of scenarios which might constitute conflict of interest and which the Vendor must disclose to WFP:

- (i) the Vendor has any kind of interest or ties with any WFP official or non-staff personnel of WFP.
- (j) the Vendor directly or indirectly controls, is controlled by, or is under common control with, another related vendor or subcontractor who provides to WFP goods and/or services that are directly or indirectly related to the execution of the present Purchase Order; or
- (k) the Vendor receives or provides any direct or indirect payment from or to another related vendor or subcontractor who provides to WFP goods and/or services that are directly or indirectly related to the execution of the present Purchase Order; or
- (l) the Vendor shares key managers with another related Vendor or subcontractor who provides to WFP goods and/or services that are directly or indirectly related to the execution of the present Purchase Order; or
- (m) the Vendor, including its key employees, has a relationship, of whatever nature, with another related vendor, including its key employees, who provides to WFP goods and/or services that are directly or indirectly related to the execution of the present Purchase Order, directly or through common third parties, that puts it in a position to influence the contract of another related vendor or subcontractor, or the decisions of WFP; or
- (n) The Vendor participates in another related contract either individually or as a partner in a joint venture or any similar partnership; or
- (o) The Vendor has participated, directly or indirectly, in the preparation of the Specifications, Scope of Work or Terms of Reference included in the solicitation documents provided by WFP, where applicable; or

The Vendor shall immediately notify WFP if any conflict of interest arises or appears likely to arise during the duration of the Purchase Order and shall make full disclosure of all relevant information relating to the conflict.

Without prejudice to any other rights or remedies it may possess, WFP may immediately terminate this Purchase Order if the Vendor, in the reasonable judgement of WFP, has a conflict of interest.

15 SUBCONTRACTING

The Vendor shall be solely and fully responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be consistent with the terms and conditions of the Purchase Order.

The Vendor shall ensure that all of its subcontractors (whether an individual or legal entity) are checked and cleared against the latest available "**Consolidated United Nations Security Council (UNSC) Sanctions List**" which can be accessed on the UNSC's website.

The Vendor represents that none of its subcontractors (whether an individual or legal entity) is subject to any sanction or suspension imposed and notified by WFP as a consequence of any prohibited practices as defined in the Anti-Fraud and Anti-Corruption Clause, a non-performance or defective performance in a contract with WFP, or any unresolved dispute or claim with WFP.

The Vendor expressly acknowledges and agrees that any breach of this clause by the Vendor or by any of its subcontractors constitutes a material breach of the Purchase Order, which entitles WFP to immediately terminate the PO without incurring any liability whatsoever to the Vendor as a result.

In addition to its right to immediately terminate the Purchase Order along with any other rights available under this PO, WFP shall have the right to:

- (i) apply and enforce the relevant sanctions in accordance with WFP internal regulations, rules, procedures, practices, policies and guidelines, including referral of the matter to national authorities where appropriate; and
- (ii) recover all losses, financial or otherwise.

16 PREVENTION OF SEXUAL EXPLOITATION AND ABUSE

16.1 WFP is committed to a policy of zero-tolerance towards sexual exploitation and abuse; it expects all its employees to comply with the Special Measures for Protection from Sexual Exploitation and Sexual Abuse set out in Circular OED2014/020 and the principles stated in WFP's Code of Conduct. It also expects all its contractors to apply similar ethical standards.

16.2 By entering into this Purchase Order, the Vendor undertakes to abide by the standards of conduct included in: (i) the Secretary-General's bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse (ST/SGB/2003/13), including those listed in Section 3, available at: <https://undocs.org/ST/SGB/2003/13> ; and (ii) Article 28 (Sexual Exploitation) of the UNGCC.

16.3 Any failure by the Vendor to comply with the mentioned standards, to take preventive measures against sexual exploitation or sexual abuse, to investigate allegations thereof, or to take corrective action, shall constitute grounds for immediate termination of this Purchase Order.

United Nations General Conditions of Contract (UNGCC) *De Minimis* Field Contracts

1. **LEGAL STATUS OF THE PARTIES:** The Contractor shall be considered as

having the legal status of an independent contractor *vis-à-vis* the United Nations. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of the United Nations.

2. **RESPONSIBILITY FOR EMPLOYEES:** The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.
3. **ASSIGNMENT:** The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of the United Nations.
4. **SUBCONTRACTING:** In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of the United Nations for all sub-contractors. The approval of the United Nations of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.
5. **INDEMNIFICATION:** The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, the United Nations, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of worker's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.
6. **INSURANCE AND LIABILITY:**
 - 6.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
 - 6.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
 - 6.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to

property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or subcontractors performing work or services in connection with this Contract.

6.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

6.4.1 Name the United Nations as additional insured;

6.4.2 Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the United Nations;

6.4.3 Provide that the United Nations shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

6.5 The Contractor shall, upon request, provide the United Nations with satisfactory evidence of the insurance required under this Article 6.

7. **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 the United Nations.
8. **EQUIPMENT FURNISHED BY THE UNITED NATIONS TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by the United Nations to the Contractor for the performance of any obligations under the Contract shall rest with the United Nations, and any such equipment shall be returned to the United Nations at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, 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 the United Nations for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.
9. **COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**
 - 9.1 Except as is otherwise expressly provided in writing in the Contract, the United Nations 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 the United Nations 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 the United Nations.
 - 9.2 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, the United Nations does not and shall not claim any ownership interest thereto, and the Contractor grants to the United Nations 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.
 - 9.3 At the request of the United Nations, 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 the United Nations in compliance with the requirements of the applicable law and of the Contract.

9.4 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 the United Nations, shall be made available for use or inspection by the United Nations at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to United Nations authorized officials on completion of work under the Contract.

10. **PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS:** 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, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations in connection with its business or otherwise without the written permission the United Nations.

11. **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"), shall be held in confidence by that Party and shall be handled as follows:

11.1 The Recipient shall:

11.1.1 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,

11.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.

11.2 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 11, the Recipient may disclose Information to:

11.2.1 any other party with the Discloser's prior written consent;
and,

11.2.2 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:

11.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly

11.2.2.2 or indirectly, over fifty percent (50%) of voting shares thereof; or,

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

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

11.3 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 the United Nations, the Contractor will give the United Nations sufficient prior notice of a request for the disclosure of Information in order to allow the United Nations to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

11.4 The United Nations 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.

11.5 The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.

11.6 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.

12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

12.1 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.

12.2 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, the United Nations shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 13, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the United Nations 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.

12.3 *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 the United Nations is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

13. TERMINATION:

13.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty (30) days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16.2 ("Arbitration"), below, shall not be deemed a termination of this Contract.

13.2 The United Nations may terminate forthwith this Contract at any time should the mandate or the funding of the Mission/Agency be curtailed or terminated, in which case the Contractor shall be reimbursed by the United Nations for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.

13.3 In the event of any termination by the United Nations under this Article, no payment shall be due from the United Nations to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract.

13.4 Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, the United Nations may, without prejudice to any other right or remedy it may have under the terms of these conditions, terminate this Contract forthwith. The Contractor shall immediately inform the UN of the occurrence of any of the above events.

13.5 The provisions of this Article 13 are without prejudice to any other rights or remedies of the United Nations under the Contract or otherwise.

14. 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.

15. **NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, the United Nations shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the United Nations 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.

16. **SETTLEMENT OF DISPUTES:**

- 16.1 **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.

- 16.2 **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 16.1, 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") and Article 34 ("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.

17. **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.

18. **TAX EXEMPTION:**

18.1 Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations provides, *inter alia*, that the United Nations, including 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 the United Nations from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the United Nations to determine a mutually acceptable procedure.

18.2 The Contractor authorizes the United Nations to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with the United Nations before the payment thereof and the United Nations 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 the United Nations with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and the United Nations shall reimburse the Contractor for any such taxes, duties, or charges so authorized by the United Nations and paid by the Contractor under written protest.

19. **MODIFICATIONS:** Pursuant to the Financial Regulations and Rules of the United Nations, only the Procurement Division at New York possesses the authority to agree on behalf of the United Nations to any modification of or change in this Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against the United Nations unless provided by an amendment to this Contract signed by the Contractor and the Chief or Deputy Chief of the Procurement Division.

20. **AUDITS AND INVESTIGATIONS:**

20.1 Each invoice paid by the United Nations shall be subject to a post-payment audit by auditors, whether internal or external,

of the United Nations or by other authorized and qualified agents of the United Nations at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract. The United Nations shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the United Nations other than in accordance with the terms and conditions of the Contract.

20.2 The United Nations 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 at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

20.3 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 the United Nations 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 the United Nations hereunder.

21. LIMITATION ON ACTIONS:

21.1 Except with respect to any indemnification obligations in Article 5, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 16.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

21.2 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.

22. **ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in Articles 23 to 28 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the United Nations to terminate the Contract or any other contract with the United Nations immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
23. **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its obligations under the Contract. Should any authority external to the United Nations seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the United Nations and provide all reasonable assistance required by the United Nations. 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 the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the United Nations.
24. **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of the United Nations any direct or indirect benefit arising from or related to the performance of the Contract or of any other contract with the United Nations or the award thereof or for any other purpose intended to gain an advantage for the Contractor.
25. **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 the United Nations, as such obligations are set forth in the United Nations vendor registration procedures.
26. **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.

27. **MINES:** The Contractor represents and warrants 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.

28. **SEXUAL EXPLOITATION:**

28.1 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.

28.2 The United Nations 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.