



GENERAL TERMS AND CONDITIONS FOR CONTRACTS

1. LEGAL STATUS OF THE PARTIES:

1.1. Pursuant, inter alia, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, 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 UNDP, 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. OBLIGATIONS OF THE CONTRACTOR; REPRESENTATIONS AND WARRANTIES:

2.1. The Contractor shall deliver the goods described in the Technical Specifications for Goods (hereinafter the "Goods") and/or perform and complete the services described in the Terms of Reference and Schedule of Payments (hereinafter the "Services"), with due diligence and efficiency, and in accordance with this Contract. The Contractor shall provide all technical and administrative support needed in order to ensure the timely and satisfactory delivery of the Goods and/or performance of the Services.

2.2. The Contractor represents and warrants the accuracy of any information or data provided to UNDP for the purpose of entering into this Contract, as well as the quality of the deliverables and reports foreseen under this Contract, in accordance with the highest industry and professional standards.

2.3. The Contractor shall promptly inform UNDP about any changes in its legal status, such as sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests and any change in the control of the Contractor that occurs during the Term.

2.4. All time limits contained in this Contract shall be deemed to be of the essence in respect of the delivery of the Goods and/or the provision of the Services.

2.5. The Contractor represents and warrants that as of the Effective Date and throughout the Term:

2.5.1. it has the full authority and power to enter into the Contract and to perform its obligations under the Contract and the Contract is a legal, valid and binding obligation, enforceable against it in accordance with its terms;

2.5.2. all of the information it has previously provided to UNDP, or that it provides to UNDP during the Term, concerning the Contractor and the provision of the Services and/or the supply of the Goods is true, correct, accurate and not misleading;

2.5.3. is financially solvent and is able to provide the Services and/or supply the Goods in accordance with the terms and conditions of the Contract; and,

2.5.4. it has, and will maintain throughout the Term, all rights, licenses, authority and resources necessary, as applicable, to provide the Services and/or supply the Goods to UNDP's satisfaction and to perform its obligations under the Contract.

3. LONG TERM AGREEMENT:

If the Contractor is engaged by UNDP on the basis of a Long-Term Agreement as indicated in the Face Sheet of this Contract, the following conditions shall apply:

3.1. UNDP does not warrant that any quantity of Goods and/or Services shall be purchased during the Term.

3.2. Any UNDP business unit, including, but not limited to, a Headquarters unit, a Country Office or a Regional Centre, as well as any United Nations entity, may benefit from this Contract by placing an order through UNDP hereunder.

3.3. The Contractor shall provide the Services and/or deliver the Goods as and when requested by UNDP in a Purchase Order issued to that effect, which shall be subject to the terms and conditions stipulated in this Contract. For the avoidance of doubt, UNDP shall acquire no legal obligations towards the Contractor unless and until a Purchase Order is issued.

3.4. The Goods and/or Services shall be at the discount prices annexed hereto. The prices shall remain in effect throughout the duration of the Contract.

3.5. In the event of any advantageous technical changes and/or downward pricing of the Goods and/or Services during the Term, the Contractor shall notify UNDP immediately. UNDP shall consider the impact of any such event and may request an amendment to this Contract.

3.6. The Contractor shall report semi-annually to UNDP on the Goods delivered and/or Services provided, unless otherwise specified in the Contract. Each report shall be submitted to the UNDP Contact Person indicated in the Face Sheet hereto, as well as to the UNDP business unit that has placed a Purchase Order for the Goods and/or Services during the reporting period.

3.7. This Contract shall remain in force for a period of one (1) year and may be extended for the maximum the period established in the Block 4 of the Face Sheet by mutual agreement of the Parties, at UNDP's discretion.

3.8. In addition to the ability of UNDP to place an order for another UN entity further to 3.2, the same terms and conditions under this Contract shall be made available to other United Nations entities whenever those entities so request. In such cases, the Parties acknowledge and agree that the Contractor shall enter into a contract with such other UN entities and deal directly with it regarding all matters that may arise in respect of any particular contract/order placed by such UN entity and that UNDP shall not be responsible for or liable to the Contractor in any way or under any circumstances with respect to such contract/order placed by such other UN entity.

4. PRICE AND PAYMENT:

4.1. Fixed Price: If Fixed Price is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services, UNDP shall pay the Contractor the fixed amount indicated in the Face Sheet of this Contract.

4.1.1. The amount stated in the Face Sheet of this Contract is not subject to any adjustment or revision because of price or currency fluctuations, or the actual costs incurred by the Contractor in the performance of the Contract.

4.1.2. UNDP shall effect payments to the Contractor in the amounts and pursuant to the schedule of payments set forth in the Terms of Reference and Schedule of Payments, upon completion by the Contractor of the corresponding deliverable(s) and upon acceptance by UNDP of the original invoices submitted by the Contractor to the UNDP Contact Person indicated in the Face Sheet of this Contract, together with whatever supporting documentation that may be required by UNDP.

4.1.3. Invoices shall indicate a deliverable completed and the corresponding amount payable.

4.1.4. Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or provision of the Services.

4.2. COST REIMBURSEMENT: If Cost Reimbursement is chosen as a payment method pursuant to the Face Sheet of this Contract, in full consideration for the complete and satisfactory delivery of the Goods and/or provision of the Services under this Contract, UNDP shall pay the Contractor an amount not exceeding the total amount stated in the Face Sheet of this Contract.

4.2.1. The said amount is the maximum total amount of reimbursable costs under this Contract. The breakdown of costs contained in the Financial Proposal referred to in the Face Sheet to this Contract shall specify the maximum amount per each cost category that is reimbursable under this Contract. The Contractor shall specify in its invoices or financial reports (as required by UNDP) the amount of the actual reimbursable costs incurred in the delivery of the Goods and/or the provision of the Services.

4.2.2. The Contractor shall not provide Services nor deliver the Goods or equipment, materials and supplies that may result in any costs in excess of the amount stated in the Face Sheet of this Contract, or of the maximum amount per each cost category specified in the breakdown of costs contained in the Financial Proposal, without the prior written agreement of the UNDP Contact Person.

4.2.3. The Contractor shall submit original invoices or financial reports (as required by UNDP) for the Goods delivered in accordance with the Technical Specifications for Goods and/or the Services provided in accordance with the schedule set forth in the Terms of Reference and Schedule of Payments. Such invoices or financial reports shall indicate a deliverable or deliverables completed and the corresponding amount payable. They shall be submitted to the UNDP Contact Person, together with whatever supporting documentation of the actual costs incurred that is required in the Financial Proposal or may be required by UNDP.

4.2.4. UNDP shall effect payments to the Contractor upon completion by the Contractor of the deliverable(s) indicated in the original invoices or financial reports (as required by UNDP) and upon acceptance of these invoices or financial reports by UNDP. Such payments shall be subject to any specific conditions for reimbursement specified in the breakdown of costs contained in the Financial Proposal.

4.2.5. Payments effected by UNDP to the Contractor shall be deemed neither to relieve the Contractor of its obligations under this Contract nor as acceptance by UNDP of the Contractor's delivery of the Goods and/or performance of the Services.

5. ADVANCE PAYMENT:

5.1. If an advance payment is due to the Contractor pursuant to the Face Sheet of this Contract, the Contractor shall submit an original invoice for the amount of that advance payment upon signature of this Contract by the Parties.

5.2. Where an advance payment equivalent to 20% or more of the contract value, or amounting to \$30,000 or more, (whichever amount is less), is to be made by UNDP under the Contract, the payment of such advance shall be contingent upon receipt and acceptance by UNDP of a bank guarantee or a certified cheque for the full amount of the advance payment, valid for the duration of the Contract, and in a form acceptable to UNDP.

6. SUBMISSION OF INVOICES AND REPORTS:

6.1. All original invoices, financial reports and any other reports and supporting documentation required under this Contract shall be submitted by mail or accepted electronic means by the Contractor to UNDP Contact Person specified in the Face Sheet of this Contract.

6.2. Where Services are to be provided, in addition to invoices, the Contractor shall submit to the UNDP Contact Person reports describing in detail the Services provided during the period of time covered in each report as specified in the Contract.

7. TIME AND MANNER OF PAYMENT:

7.1. Invoices shall be paid within thirty (30) days of the date of their acceptance by UNDP. UNDP shall make every effort to accept an original invoice or advise the Contractor of its non-acceptance within a reasonable time from receipt.

7.2. The Contractor acknowledges and agrees that UNDP may withhold payment in respect of any invoice if, in UNDP's opinion, the Contractor has not performed the Services and/or has not supplied the Goods in accordance with the terms and conditions of the Contract, or if the Contractor has not provided sufficient documentation in support of the invoice.

7.3. UNDP will have the right to set off, against any amount or amounts due and payable by UNDP to the Contractor under the Contract, any payment, indebtedness or other claim (including, without limitation, any overpayment made by UNDP to the Contractor) owing by the Contractor to UNDP under the Contract or under any other contract or agreement between the Parties. UNDP will not be required to give the Contractor prior notice before exercising this right of set-off (such notice being waived by the Contractor). UNDP will promptly notify the Contractor after it has exercised such right of set-off, explaining the reasons for such set-off, provided, however, that the failure to give such notification will not affect the validity of such set-off.

8. PERSONNEL OF THE CONTRACTOR:

To the extent that the Contract involves the provision of Services to UNDP by the Contractor's officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

8.1. The Contractor is responsible for and shall assume all risk and liabilities relating to its personnel and property.

8.2. The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the work and who, while doing so, will respect the local laws and customs, and conform to a high standard of moral and ethical conduct.

8.3. The Contractor's personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively.

8.4. At the option of and in the sole discretion of UNDP:

8.4.1. the qualifications of personnel proposed by the Contractor (e.g., a curriculum vitae) may be reviewed by UNDP prior to such personnel's performing any work under the Contract;

8.4.2. any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNDP prior to such personnel's performing any work under the Contract; and,

8.4.3. in cases in which, pursuant to Article 8.4.1 or 8.4.2, UNDP has reviewed the qualifications of such Contractor's personnel, UNDP may reasonably refuse to accept any such personnel.

8.5. Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made

only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

- 8.5.1.** UNDP may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel, and such request shall not be unreasonably refused by the Contractor.
 - 8.5.2.** Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNDP, which shall not be unreasonably withheld.
 - 8.5.3.** In the event that the personnel that the Contractor assigns to perform work under the Contract is replaced during the duration of the Contract, the qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any work under the Contract shall be substantially the same as, or better than, the qualifications of any personnel originally proposed by the Contractor.
 - 8.5.4.** The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of the works.
 - 8.5.5.** All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
 - 8.5.6.** Any request by UNDP for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNDP shall not bear any liability in respect of such withdrawn or replaced personnel.
 - 8.5.7.** If a request for the withdrawal or replacement of the Contractor's personnel is not based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UNDP officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.
- 8.6.** Nothing in Articles 8.4, 8.5 and 8.6 shall be construed to create any obligations on the part of UNDP with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.
- 8.7.** The Contractor shall be responsible for requiring that all personnel assigned by it to perform works under the Contract and who may have access to any premises or other property of UNDP shall:

- 8.7.1.** undergo or comply with security screening requirements made known to the Contractor by UNDP, including but not limited to, a review of any criminal history;
- 8.7.2.** when within UNDP premises or on UNDP property, display such identification as may be approved and furnished by UNDP's security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to UNDP for cancellation.
- 8.8.** Within one (1) working day after learning that any of Contractor's personnel who have access to any UNDP premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNDP about the particulars of the charges then known and shall continue to inform UNDP concerning all substantial developments regarding the disposition of such charges.
- 8.9.** The Contractor will comply with all applicable international standards and national labor laws, rules and regulations relating to the employment of national and international personnel in connection with the Services, including, but not limited to, laws, rules and regulations associated with the payment of the employer's portions of income tax, insurance, social security, health insurance, worker's compensation, retirement funds, severance or other similar payments. For the avoidance of doubt, the Contractor acknowledges that the Contractor's personnel shall not be considered "officials of UNDP" nor "experts on mission" and therefore shall not, by virtue of its association with UNDP be granted the privileges and immunities accorded to such individuals in the Convention on the Privileges and Immunities of the United Nation. Without limiting the provisions of this Article, the Contractor will be fully responsible and liable for, and UNDP will not be liable for, all payments due to its personnel and sub-contractors for their services in relation to the performance of the Contract. Moreover, such personnel and sub-contractors shall be responsible for the own private legal obligations.
- 8.10.** All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNDP premises or on UNDP property shall be confined to areas authorized or approved by UNDP. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNDP premises or on UNDP property without appropriate authorization from UNDP.
- 8.11.** The Contractor shall (i) put in place an appropriate security plan and maintain the security plan, taking into account the security situation in the country where the Services are being provided; and (ii) assume all risks and liabilities related to the Contractor's security, and the full implementation of the security plan.

8.12. UNDP reserves the right to verify whether such a plan is in place, and to suggest modifications to the plan when necessary. Failure to maintain and implement an appropriate security plan as required hereunder shall be deemed a breach of this contract. Notwithstanding the foregoing, the Contractor shall remain solely responsible for the security of its personnel and for UNDP's property in its custody as set forth in paragraph 8.10.

9. ASSIGNMENT:

9.1. Except as provided in Article 9.2, 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 its rights, claims or obligations under the Contract, except with the prior written authorization of UNDP. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNDP. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of UNDP. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNDP.

9.2. The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations; provided that:

9.2.1. such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; and,

9.2.2. such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; and,

9.2.3. the Contractor promptly notifies UNDP about such assignment or transfer at the earliest opportunity; and,

9.2.4. 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 UNDP following the assignment or transfer.

10. SUBCONTRACTING:

10.1. 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 UNDP. UNDP shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that UNDP reasonably considers is not qualified to perform obligations under the Contract. UNDP shall have the right to require any subcontractor's removal from UNDP 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.

11. PURCHASE OF GOODS:

To the extent that the Contract involves any purchase of Goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following provisions shall apply to such purchases under the Contract:

11.1. Delivery of Goods and Risk of Loss: The Contractor shall hand over or make available the Goods, and UNDP 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 UNDP with written evidence of the delivery of the Goods. Such evidence of delivery shall, at the minimum, consist of an invoice, a certification of conformity, and other shipment documentation (including, without limitation, bills of lading and airway bills) and other documentation 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 acceptance of the Goods by UNDP in accordance with Article 11.6. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by UNDP.

11.2. Inspection of the Goods: The Contractor shall notify UNDP when the Goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNDP 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. The Contractor shall furnish to UNDP or its designated inspection agents, at no charge therefor, full and timely cooperation with any such inspection, and all reasonable facilities and assistance, including, but not limited to, access to drawings and production data. 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.

11.3. 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 UNDP 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.

11.4. 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 UNDP receives all necessary transport documents in a timely manner so as to enable UNDP to accept the Goods in accordance with the requirements of the Contract.

11.5. Warranties: Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of UNDP stated in or arising under the Contract, the Contractor warrants and represents that:

11.5.1. The Goods, including all packaging and packing thereof, conform to the technical specifications, 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, manufacturing and workmanship;

11.5.2. If the Contractor is not the original manufacturer of the Goods, the Contractor shall provide UNDP with the benefit of all manufacturers’ warranties in addition to any other warranties required to be provided under the Contract;

11.5.3. 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;

11.5.4. 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;

11.5.5. The Goods are new and unused;

11.5.6. Unless otherwise specified in the Contract, 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 UNDP in accordance with the Contract. In the event of pharmaceutical goods or other perishable goods, the warranties for those Goods will be no less than the shelf-life of those Goods specified in the Contract;

11.5.7. During any period in which the Contractor's warranties are effective, upon notice by UNDP 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 UNDP for the purchase price paid for the defective Goods; and,

11.5.8. The Contractor shall remain responsive to the needs of UNDP for any services that may be required in connection with any of the Contractor's warranties under the Contract.

11.6. Acceptance of Goods: Under no circumstances shall UNDP be required to accept any Goods that do not conform to the specifications or requirements of the Contract. UNDP 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 UNDP be obligated to accept any Goods unless and until UNDP has had a reasonable opportunity to inspect the Goods following delivery. If the Contract specifies that UNDP shall provide a written acceptance of the Goods, the Goods shall not be deemed accepted unless and until UNDP in fact provides such written acceptance. In no case shall payment by UNDP in and of itself constitute acceptance of the Goods.

11.7. Rejection of Goods: Notwithstanding any other rights of, or remedies available to UNDP 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, or if the Contractor delivers the Goods late or fails to deliver the Goods (or any part of the Goods) in accordance with the agreed delivery dates and delivery terms and instructions, UNDP, at its sole option, may reject or refuse to accept the Goods, and within thirty (30) days following receipt of notice from UNDP of such rejection or refusal to accept the Goods, the Contractor shall, in sole option of UNDP:

11.7.1. provide a full refund upon return of the Goods, or a partial refund upon a return of a portion of the Goods, by UNDP; or,

11.7.2. repair the Goods in a manner that would enable the Goods to conform to the specifications or other requirements of the Contract; or,

11.7.3. replace the Goods with Goods of equal or better quality; and,

11.7.4. 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 UNDP; and,

11.7.5. pay liquidated damages, if applicable under the Contract

11.8. In the event that UNDP elects to return any of the Goods for the reasons specified in Article 11.7, UNDP may procure the Goods from another source. In addition to any other rights or remedies available to UNDP 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 UNDP shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the Goods for the Contractor's account. UNDP may set-off such costs and expenses against any amounts owed to the Contractor under the Contract and under any other contract between the Parties. The Contractor expressly acknowledges that if, in respect of any consignment, UNDP takes delivery of all or some of the Goods that have been delivered late or otherwise not in full compliance with the delivery terms and instructions or that are not in full conformity with the requirements of the Contract, this does not constitute a waiver of UNDP's rights in respect of such late delivery or non-compliant Goods.

11.9. Title: The Contractor represents and warrants 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 UNDP upon acceptance of the Goods by UNDP in accordance with the requirements of the Contract.

11.10. Export Licenses: Without prejudice to the INCOTERM specified in the Contract, 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 UNDP 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 UNDP, UNDP 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 consult with UNDP to enable UNDP to take appropriate measures to resolve the matter.

12. SERVICES:

12.1. Rejection of Services: If the Services provided by the Contractor do not conform to the requirements of the Contract or are delivered late or incomplete, without prejudice to any of its other rights and remedies, UNDP can, at its option:

12.1.1. by written notice, require the Contractor, at the Contractor's expense, to remedy its performance, including any deficiencies in any deliverables to be provided under the Contract, to UNDP's satisfaction within thirty (30) days after receipt of UNDP's notice (or within such shorter period as UNDP may determine, in its sole discretion, is necessary as specified in the notice);

require the Contractor to refund all payments (if any) made by UNDP in respect of such non-conforming or incomplete performance;

12.1.2. procure all or part of the Services or deliverables to be provided under the Contract from other sources, and require the Contractor to pay UNDP for any additional cost beyond the balance of the fee for such Services and deliverables;

12.1.3. give written notice to terminate the Contract for breach, in accordance with Article 6.1,

12.1.4. require the Contractor to pay liquidated damages as set out in the Contract.

12.2. The Contractor expressly acknowledges that if UNDP takes delivery of Services or deliverables that have been delivered late or otherwise not in full compliance with the requirements of the Contract, this does not constitute a waiver of UNDP's rights in respect of such late or non-compliant performance.

12.3 Warranties: The Contractor warrants that any Services provided by the Contractor hereunder shall be performed in a timely and professional manner, by qualified professional personnel, that such Services shall conform to the highest standards observed in the industry for similar services.

13. INDEMNIFICATION:

13.1. The Contractor shall indemnify, defend, hold and save harmless UNDP 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 UNDP, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

13.1.1. allegations or claims that the possession of or use by UNDP of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to UNDP under 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,

13.1.2. 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 workers' compensation.

13.2. The indemnity set forth in Article 13.1.1 shall not apply to:

13.2.1. A claim of infringement resulting from the Contractor's compliance with specific written instructions by UNDP 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

13.2.2. 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 UNDP or another party acting under the direction of UNDP made such changes.

13.3. In addition to the indemnification obligations set forth in this Article 13, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 13, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

13.4. UNDP 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 UNDP or any matter relating thereto, for which only UNDP itself is authorized to assert and maintain. UNDP 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.

13.5. In the event that the use by UNDP of any Goods, property or Services provided or licensed to UNDP 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:

13.5.1. procure for UNDP the unrestricted right to continue using such Goods or Services provided to UNDP;

13.5.2. replace or modify the Goods and/or or Services provided to UNDP, or part thereof, with the equivalent or better Goods and/or Services, or part thereof, that is non-infringing; or,

13.5.3. refund to UNDP the full price paid by UNDP for the right to have or use such Goods, and/or Services, or part thereof.

13.6. This provision shall not expire upon expiration or termination of the Contract.

14. LIABILITY AND INSURANCE:

14.1. Without prejudice to any other liability of the Contractor under the Contract, the Contractor shall pay UNDP promptly for all loss, destruction, or damage to UNDP, including its property caused by the Contractor, its 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.

14.2 Unless otherwise provided in the Contract, prior to commencement of performance of any obligation 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, for any extension thereof, and for a period following expiration and/or termination of the Contract reasonably adequate to deal with losses:

14.2.1. insurance against all risks in respect of property and any equipment used for the performance of the Contract;

14.2.2. 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;

14.2.3. 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 owned or not by the Contractor; and,

14.2.4. such other insurance as may be agreed upon in writing between UNDP and the Contractor.

14.3. The Contractor's liability policies shall also cover subcontractors and well as any legal costs and other related expenses arising from or in connection with the Contractor's performance under the Contract.

14.4. The Contractor acknowledges and agrees that UNDP 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.

14.5. Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNDP, 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:

14.5.1. name UNDP as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

14.5.2. include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP; and,

14.5.3. provide that UNDP 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.

14.6. The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

14.7. Except for any self-insurance program maintained by the Contractor and approved by UNDP 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 UNDP. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNDP with evidence, in the form of a certificate of insurance or such other form as UNDP may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNDP 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 14.5.3, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.

14.8. 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.

15. ENCUMBRANCES AND LIENS:

15.1. 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 UNDP against any monies due to the Contractor or that may become due for any Services performed or against any Goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or UNDP.

16. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR:

16.1. Title to all equipment and supplies that may be furnished by UNDP to the Contractor for the performance of any obligations under the Contract shall rest with UNDP, and any such equipment shall be returned to UNDP at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to UNDP, 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 UNDP for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

17. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

17.1. Except as is otherwise expressly provided in writing in the Contract, UNDP 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 UNDP under the Contract and/or 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 UNDP.

17.2. 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, UNDP does not and shall not claim any ownership interest thereto, and the Contractor grants to UNDP a perpetual, royalty free license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

17.3. At the request of UNDP, 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 UNDP in compliance with the requirements of the applicable law and of the Contract.

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

18. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF UNDP OR THE UNITED NATIONS:

18.1. The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill or otherwise that it has a contractual relationship with UNDP, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of UNDP or the United Nations, or any abbreviation of the name of UNDP or the United Nations in connection with its business or otherwise without the written permission of UNDP. In no event will authorization to use the UNDP name or emblem, or any abbreviation thereof, be granted for commercial purposes, or for use in any manner that suggests an endorsement by UNDP of the Contractor or the Contractor's products and/or services. This provision shall not expire upon expiration or termination of the Contract.

19. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:

19.1 Information and data, excluding UNDP Personal Data (as defined in Article 20.1), that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that has been designated as confidential at the time of exchange or promptly identified as confidential in writing when furnished in intangible form or disclosed orally, as well as information that the Recipient knows or should have reasonably known from its inherent nature, quality or characteristics that is proprietary or confidential ("Information"), shall be held in confidence by the Recipient and shall be handled in accordance with this Article 19.

19.2 The Recipient shall:

- (a) 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

(b) use the Discloser's Information solely for the purpose for which it was disclosed.

19.3 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information as confidential in accordance with the Contract and this Article 19, the Recipient may disclose Information to:

19.3.1 Any other party with the Discloser's prior written consent;

19.3.2 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. For the purposes of this Article, a controlled legal entity means:

- (a) a legal entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or
- (b) a legal entity over which the Party exercises effective managerial control; and

19.3.3 For UNDP, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

19.4 UNDP may determine that any Information provided by UNDP to the Contractor forms part of the property and archives of UNDP within the meaning of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15 (1946) (the "General Convention"), and Article II of the General Convention is applicable to all such Information.

19.5 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 UNDP sufficient prior notice of a request for the disclosure of Information in order to allow UNDP to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

19.6 UNDP may disclose Information to the extent required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder, or pursuant to UNDP's regulations, rules, policies and procedures.

19.7 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.

19.8 These obligations and restrictions of confidentiality shall be effective during the Term, including any extension thereof, and shall remain effective following termination or expiration of the Contract.

20. PERSONAL DATA:

20.1 For purposes of this Contract:

- (a) “Personal Data” shall mean any information relating to an identified or identifiable individual.
- (b) “UNDP Personal Data” shall mean Personal Data that is obtained by the Contractor from UNDP or generated by the Contractor for UNDP in connection with, or related to, the performance of the Contract.

20.2 With respect to Personal Data that it obtains from the Contractor in connection with this Contract, UNDP shall:

- (a) apply its own legal framework, including the [UNDP Personal Data Protection and Privacy Policy](#) and the UN Personal Data Protection Principles;
- (b) use the same care and discretion to avoid disclosure, publication or dissemination of the Personal Data as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and
- (c) use the Personal Data solely for the purpose for which it was disclosed.

20.3 Unless otherwise provided for in this Contract, with respect to UNDP Personal Data, the Contractor shall comply at a minimum:

- (a) comply with all laws applicable to the Contractor;
- (b) apply the UNDP Personal Data Protection and Privacy Policy and the UN Personal Data Protection Principles;
- (c) use the same care and discretion to avoid disclosure, publication or dissemination of the UNDP Personal Data as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and
- (d) use the UNDP Personal Data solely for the purpose for which it was disclosed.

20.4 Without prejudice to the generality of Article 20.3, and unless otherwise more specifically provided in the Contract, the Contractor shall comply at a minimum:

- 20.4.1** process UNDP Personal Data solely and exclusively in accordance with the requirements of the Contract, and shall not use UNDP Personal Data for the Contractor’s research, marketing,

sales, promotional, or any other purposes;

20.4.2 implement appropriate technical and organizational measures, including appropriate access-control measures, with respect to UNDP Personal Data;

20.4.3 implement appropriate data security measures to preserve the integrity of UNDP Personal Data and prevent any corruption, tampering, loss, damage, unauthorized access and improper disclosure of UNDP Personal Data;

20.4.4 may disclose UNDP Personal Data only to those of its officials and employees who have a need to know such UNDP Personal Data for purposes of performing obligations under this Contract;

20.4.5 process UNDP Personal Data in a manner that is legitimate, transparent, adequate, accurate, relevant and limited to what is necessary for the performance of the Contract, and ensure that UNDP Personal Data is kept for no longer than is necessary to perform services under the Contract;

20.4.6 as and when requested by UNDP, provide access to, correct, delete, refrain from, or restrict processing of UNDP Personal Data;

20.4.7 upon becoming aware of any data or security breach (including any accidental or unauthorized destruction, loss, alteration, disclosure, access, or unplanned loss of availability) that affects, or may affect, UNDP Personal Data:

- (a) immediately notify UNDP in writing;
- (b) take immediate mitigating and/or remedial action, including mitigating and/or remedial action as directed by UNDP; and
- (c) inform and update on a regular basis UNDP of any measures taken by the Contractor to address such data or security breach;

20.4.8 promptly notify UNDP if it believes performance of the obligations under this Contract or compliance with any UNDP instruction breaches, or might reasonably be considered to breach, any applicable data protection laws or the UNDP Personal Data Protection and Privacy Policy;

20.4.9 if it receives any complaint, request (including a data subject access request), notice, or communication which relates directly or indirectly to UNDP Personal Data:

- (a) immediately notify UNDP;
- (b) consult with, and follow the instructions of, UNDP with respect to handling any such

complaint, request, notice or communication; and

- (c) provide full co-operation and assistance to UNDP if UNDP elects to respond to such complaint, request, notice, or communication;

20.4.10 return, delete or destroy UNDP Personal Data if so instructed by UNDP in writing, and provide evidence of such action to UNDP upon written request;

20.4.11 destroy any and all UNDP Personal Data 10 years after the date on which this Contract expires or terminates, unless otherwise instructed by UNDP in writing.

20.5 Except as provided for in Article 20.4 the Contractor shall not otherwise transfer, disclose, publish or disseminate UNDP Personal Data without UNDP's prior written consent.

20.6 The provisions of this Article 20 shall survive any termination or expiration of the Contract.

21. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

21.1. 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 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. If the affected Party is the Contractor, on receipt of the notice required hereunder, UNDP shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform any obligations under the Contract.

21.2. If UNDP or 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, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 22, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In the absence of notice from the Contractor, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the force majeure is of public knowledge or the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of thirty (30) days.

21.3. Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), act of government, invasion, revolution, insurrection, terrorism, or any

other acts of a similar nature or force, including, among others, pandemics or epidemics affecting any of the Parties' ability to perform hereunder, provided that such acts arise from causes beyond the control and without the fault or negligence of the affected Party. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which UNDP 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.

22. TERMINATION:

22.1. Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other Party. The initiation of amicable settlement or arbitral proceedings in accordance with Article 25 "Settlement of Disputes" shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

22.2. UNDP may terminate the Contract at any time with immediate effect by providing written notice to the Contractor in any case in which the mandate of UNDP applicable to the performance of the Contract or the funding of UNDP 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, UNDP may terminate the Contract without having to provide any justification therefor.

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

22.3.1. 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;

22.3.2. refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

22.3.3. place no further subcontracts or orders for materials, services, or facilities, except as UNDP and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

22.3.4. terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

- 22.3.5.** transfer title and deliver to UNDP the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
- 22.3.6.** 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 UNDP thereunder;
- 22.3.7.** complete performance of the work not terminated; and,
- 22.3.8.** return to UNDP all of UNDP's information and materials provided to the Contractor under the Contract, including, but not limited to, UNDP data, or, at UNDP's option with respect to information, destroy all copies of such information held by the Contractor or its sub-contractors and confirm such destruction to UNDP in writing; and,
- 22.3.9.** take any other action that may be necessary, or that UNDP 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 UNDP has or may be reasonably expected to acquire an interest.
- 22.4.** In the event of any termination of the Contract, UNDP shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNDP shall not be liable to pay the Contractor except for those Goods satisfactorily delivered and/or Services satisfactorily provided to UNDP 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 UNDP or prior to the Contractor's tendering of notice of termination to UNDP. The Contractor will have no claim for any further payment beyond payments in accordance with this Article 22.4, and it will remain liable to UNDP for all loss or damages which may be suffered by UNDP by reason of the Contractor's default, as further specified Article 22.7.
- 22.5.** UNDP may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- 22.5.1.** 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;
 - 22.5.2.** the Contractor is granted a moratorium or a stay, or is declared insolvent;
 - 22.5.3.** the Contractor makes an assignment for the benefit of one or more of its creditors;

22.5.4. a Receiver is appointed on account of the insolvency of the Contractor;

22.5.5. the Contractor offers a settlement in lieu of bankruptcy or receivership; or,

22.5.6. UNDP 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.

22.6. Except as prohibited by law, the Contractor shall be bound to compensate UNDP for all damages and costs, including, but not limited to, all costs incurred by UNDP in any legal or non-legal proceedings, as a result of any of the events specified in Article 22.5 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 UNDP of the occurrence of any of the events specified in Article 22.5 and shall provide UNDP with any information pertinent thereto.

22.7. In the event that the Contract is terminated by UNDP in accordance with Article 22.1 due to a breach by the Contractor of its obligation under the Contract, the Contractor shall be bound to compensate UNDP for all damages and costs incurred by UNDP as a consequence of such termination and for any additional cost beyond the balance of the Contract price resulting from any procurement conducted by UNDP to procure the Goods and/or Services from another source, including, inter alia, the costs of engaging in such procurement. UNDP may set-off such costs and expenses against any amounts owed to the Contractor under the Contract or under other contracts with the Contractor.

22.8. The provisions of this Article 22 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

23. NON-WAIVER OF RIGHTS:

23.1. No grant of time to the Contractor to cure a default under the Contract nor the failure by UNDP to exercise any rights available to it, whether under the Contract or otherwise, shall be deemed for any purposes to constitute a waiver by UNDP of any such right or any remedy associated therewith, and shall not relieve the Contractor of any of its obligations under the Contract.

24. NON-EXCLUSIVITY:

24.1. Unless otherwise specified in the Contract, UNDP shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and UNDP 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.

25. SETTLEMENT OF DISPUTES:

25.1 Any dispute, controversy, or claim between the Parties arising out of the Contract, or out of the breach, termination or invalidity thereof (“Dispute”) shall be finally settled in the manner set out in this Article 25, which shall be binding on the Parties and shall be the exclusive mode of settlement of the Dispute in accordance with Article VIII, Section 29, of the Convention on the Privileges and Immunities of the United Nations, 1 U.N.T.S. 15 (1946).

25.2 Amicable Settlement:

25.2.1 The Parties shall use their best efforts to amicably settle any Dispute. For that purpose, the Party asserting a claim shall provide to the other Party a detailed description of the Dispute, specifying the relief or remedy sought, together with a copy of the Contract and all relevant supporting documentation (“Notice of Dispute”).

25.2.2 Neither Party may refer the Dispute to arbitration, pursuant to Article 25.3, prior to pursuing amicable settlement efforts and prior to the expiry of sixty (60) days from the date of the Notice of Dispute. However, the foregoing shall not preclude a Party to the Contract from referring a Dispute to arbitration if such Party seeks interim measures of protection under the Arbitration Rules of the United Nations Commission on International Trade Law (“UNCITRAL Arbitration Rules”).

25.3 Arbitration:

25.3.1 Either Party may refer a Dispute that has not been resolved amicably pursuant to Article 25.2 to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining, subject to the provisions of this Article 25.3.

25.3.2 The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration. The Parties agree that the periods for the intervention of the appointing authority stipulated in Article 8, paragraph 1, and Article 9, paragraphs 2 and 3, of the UNCITRAL Arbitration Rules shall be sixty (60) days.

25.3.3 Any agreement between the Parties or decision by the arbitral tribunal as to the place of arbitration or the venue of the proceedings shall mean only the physical location where the arbitral tribunal shall hold in-person meetings, including for its deliberations or hearings, pursuant to Article 18, paragraph 2, of the UNCITRAL Arbitration Rules. Such agreement or decision as to the place of arbitration shall not amount to the determination of a legal seat, shall not entail any submission to any country's law and jurisdiction in connection with the arbitral proceedings and any resulting award(s), and shall not be construed as a waiver, express or implied, of the privileges and immunities of the United Nations, including UNDP.

25.3.4 In interpreting the rights and obligations of the Parties under the Contract, the arbitral tribunal shall first apply the terms of the Contract and then apply generally recognized principles of international commercial law. Procedural matters shall be governed by the provisions of this Article 25 and the UNCITRAL Arbitration Rules. Where necessary, the Arbitral Tribunal may seek additional guidance from the generally accepted principles of procedure applied by international tribunals.

25.3.5 The arbitral tribunal may exercise the powers envisaged in Article 27, paragraph 3, of the UNCITRAL Arbitration Rules in respect of documents, exhibits or other evidence that (i) the Parties agree are to be produced or (ii) which the arbitral tribunal, in view of the statements of claim and defense and the evidentiary record, considers relevant to the Dispute and material to its outcome. When apportioning costs pursuant to Article 42, paragraph 1, of the UNCITRAL Arbitration Rules, the arbitral tribunal shall take into account the reasonableness of document production requests.

25.3.6 In accordance with the UNCITRAL Arbitration Rules, 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.

25.3.7 Unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award: (1) punitive damages or damages for indirect or consequential losses; (2) interest other than simple interest and only at the Federal Reserve Bank of New York's Secured Overnight Financing Rate prevailing at the time of the award.

25.3.8 The arbitral tribunal shall have no authority to award any pre-award interest.

26. PRIVILEGES AND IMMUNITIES:

26.1. 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 UNDP.

27. TAX EXEMPTION:

27.1. 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 UNDP from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNDP to determine a mutually acceptable procedure.

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

28. MODIFICATIONS; NOTICES:

28.1. No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing and signed by the duly Authorized Representatives of the Parties. Without prejudice to the forgoing:

28.1.1 any changes to the Contractor's bank account specified in the Face Sheet shall require a formal amendment to the Contract in accordance with this Article 28.1 and

28.1.2 any changes to the Contact Person specified in block 13 and 14 of the Face Sheet may be made by unilateral written notice from the Party making the change to the other Party, and such change shall be effective as of the date of the notice.

28.2. 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 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 28.1.

28.3. 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 UNDP nor in any way shall constitute an agreement by UNDP thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 28.1.

28.4. Any notice, request or consent required or permitted to be given or made pursuant to the Contract will be in writing and addressed to the persons listed in the Face Sheet of this Contract for the delivery of notices, requests or consents. Notices, requests or consents will be delivered in person, by registered mail, by confirmed email transmission or by other accepted electronic means. Notices, requests or consents will be deemed received upon delivery (if delivered in person), upon signature of receipt (if delivered by registered mail) or when confirmation of receipt is sent from the addressee's email address (if delivered by confirmed email transmission).

28.5. Any notice, document or receipt issued in connection with the Contract must be consistent with the terms and conditions of the Contract and, in case of any ambiguity, discrepancy or inconsistency, the terms and conditions of the Contract will prevail.

28.6. All documents that comprise the Contract, and all documents, notices and receipts issued or provided pursuant to or in connection with the Contract, will be deemed to include, and will be interpreted and applied consistently with, the provisions of Article 26.

29. AUDITS AND INVESTIGATIONS:

29.1. Each invoice paid by UNDP shall be subject to a post-payment audit by auditors, whether internal or external, of UNDP or by other authorized and qualified agents of UNDP at any time during the Term and for a period of three (3) years following the expiration or prior termination of the Contract.

29.2. UNDP 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. The right of UNDP 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.

29.3. The Contractor shall provide its full and timely cooperation with any such 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 UNDP 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 post-payment audits or investigations carried out by UNDP hereunder.

29.4. UNDP shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNDP other than in accordance with the terms and conditions of the Contract. The Contractor also agrees that, where applicable, donors to UNDP whose funding is the source of, in whole or in part, the funding for the procurement of the Goods and/or Services which are the subject of this Contract, shall have direct recourse to the Contractor for the recovery of any funds determined by UNDP to have been used in violation of or inconsistent with this Contract.

30. LIMITATION ON ACTIONS:

30.1. Except with respect to any indemnification obligations in Article 13 or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 25.3 arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.

30.2. 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.

31. ESSENTIAL TERMS:

31.1. The Contractor acknowledges and agrees that each of the provisions in Articles 20, and 32 to 38 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNDP to terminate the Contract or any other contract with UNDP immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. In addition,

nothing herein shall limit the right of UNDP to refer any alleged breach of the said essential terms to the relevant national authorities for appropriate legal action.

32. SOURCE OF INSTRUCTIONS:

32.1. The Contractor shall neither seek nor accept instructions from any authority external to UNDP in connection with the performance of its obligations under the Contract. Should any authority external to UNDP seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNDP and provide all reasonable assistance required by UNDP. 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 UNDP or the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNDP.

33. STANDARDS OF CONDUCT; CONFLICTS OF INTEREST:

33.1. 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 UNDP.

33.2. In the performance of the Contract, the Contractor shall comply with the Secretary General's Bulletin ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply and be subject to, and shall ensure that its subcontractors under the Contract comply with and are subject to, the requirements of the following documents then in force at the time of signature of the Contract:

33.2.1. The UN Supplier Code of Conduct;

33.2.2. UNDP Policy on Fraud and other Corrupt Practices;

33.2.3. UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

33.2.4. UNDP Social and Environmental Standards (SES), including the related Accountability Mechanism;

33.2.5. UNDP Vendor Sanctions Policy;

33.2.6. All security directives relevant to the performance of the Contract issued by UNDP; and

33.2.7. If the Contractor is providing hosting services, the UNDP Classification and Handling of Information Policy.

33.3. The Contractor acknowledges and agrees that it has read and is familiar with the requirements of the foregoing documents which are available online at www.undp.org or at <https://www.undp.org/procurement>. In making such acknowledgement, the Contractor represents and

warrants that it is in compliance with the requirements of the foregoing and will remain in compliance throughout the Term.

33.4. The Contractor further represents that, in respect of all aspects of the Contract (including the award of the Contract by UNDP to the Contractor and the selection and awarding of sub-contracts by the Contractor), it has disclosed and will disclose to UNDP any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest.

34. OBSERVANCE OF THE LAW:

34.1. 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 UNDP, as such obligations are set forth in UNDP vendor registration procedures.

35. CHILD LABOR:

35.1. 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.

36. MINES:

36.1. 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.

37. PROHIBITION OF SEXUAL EXPLOITATION AND SEXUAL ABUSE, AND SEXUAL HARASSMENT:

37.1. In the performance of this Contract, the Contractor represents and warrants that it, its parent entities (if any), or any of the Contractor's subsidiary or affiliated entities (if any) has in place adequate and proper procedures, processes and policies to prevent and address sexual exploitation and sexual abuse ("SEA") and sexual harassment ("SH"). The Contractor shall take all appropriate measures to

prevent SEA and SH of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any Services under the Contract.

37.2. For these purposes, sexual activity with any person less than eighteen (18) years of age, regardless of any laws relating to consent, shall constitute SEA 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.

37.3. For the purposes of this Contract, SH shall be defined as any unwelcome conduct of sexual nature, that might reasonably be expected or be perceived to cause offence or humiliation, when such conduct interferes with work, is made a condition of employment or creates an intimidating, hostile or offensive work environment. SH may occur in the workplace or in connection with work. While typically involving a pattern of conduct, SH may take the form of a single incident. In assessing the reasonableness of expectations or perceptions, the perspective of the person who is the target of the conduct shall be considered.

38. PROHIBITION ON THE FINANCING OF TERRORISM AND MONEY LAUNDERING:

38.1. UNDP is committed to the highest ethical standards and will not tolerate the diversion of the resources entrusted to it through Money Laundering or Terrorist Financing, and will not engage entities that tolerate the diversion of resources for the purposes of Money Laundering or Terrorist Financing.

38.2. The Contractor:

38.2.1 represents and warrants that it has not, and it shall not at any time during the duration of this Contract, engage in Money Laundering or Terrorist Financing;

38.2.2 undertakes to take all reasonable measures to ensure that none of (i) its Beneficial Owners, officers or employees (together, as used in this clause, referred to as “affiliates”), or (ii) its contractors/suppliers, subcontractors, joint venture/consortium members, or agents (together, as used in this clause, referred to as “subparties”), engage in Money Laundering or Terrorist Financing; and

38.2.3 shall ensure that the restrictions contained in this clause are reflected in its agreements with any subparties which are in any way involved in the implementation of any activity under this Contract.

38.3. The Contractor shall immediately notify UNDP if it becomes aware of any actual, apparent, potential or attempted instances of Money Laundering or Terrorist Financing in relation to any of (i) its affiliates, or (ii) subparties which are in any way involved in the implementation of any activity under this Contract. The Contractor shall fully cooperate with any investigation or review by UNDP of Money Laundering or Terrorist Financing activity.

38.4. The Contractor acknowledges and agrees that any breach of this Article 38, or any other engagement in Money Laundering or Terrorist Financing by it, or by any of (i) its affiliates, or (ii) the subparties which are in any way involved in the implementation of any activity under this Contract, constitutes a material breach of this Contract, which entitles UNDP to:

38.4.1 immediately terminate this Contract without incurring any liability or penalty;

38.4.2. apply and enforce any relevant sanctions in accordance with UNDP's policies and procedures, including referring the matter to national authorities when appropriate; and

38.4.3. recover all losses, financial or otherwise, suffered by UNDP in connection with such Money Laundering or Terrorist Financing activity.

38.5. For the purpose of this clause, the following terms shall have the meaning ascribed to the below:

38.5.1. "Money Laundering" is any intentional act or omission that is designed to, or results in, concealment of the origins of money obtained illegally, typically by passing it through a complex sequence of financial or commercial transactions. Money Laundering usually involves three stages: (i) introducing the proceeds of crime into the financial system (placement); (ii) transactions to convert or transfer the funds to other locations or financial institutions (layering); and (iii) reintroducing the funds into the legitimate economy as "clean" money and investing it in various assets or business ventures (reintegration) appearing to have been legally obtained.

38.5.2. "Terrorist Financing" means engaging with, contracting or providing support to individuals or entities that appear on the United Nations Security Council Consolidated Sanctions List, accessible at <https://www.un.org/securitycouncil/content/un-sc-consolidated-list>.

38.5.3. The “Beneficial Owner” means each natural person that exercises ultimate effective control over the Contractor. This may include:

- (i) Natural persons who have, directly or indirectly, controlling ownership of the Contractor.
- (ii) To the extent that there is doubt under (i), natural persons who exercise control of the Contractor through other means – including through personal connections, family relationships, or contractual associations such as financing of the Contractor.
- (iii) Where no natural person is identified under (i) or (ii) above, the natural person who holds the position of senior managing official.