

GENERAL CONDITIONS OF CONTRACT

FOR THE SERVICES OF INDIVIDUAL CONTRACTORS



1. LEGAL STATUS: The Individual contractor shall have the legal status of an independent contractor vis-à-vis the United Nations Capital Development Fund (UNCDF), and shall not be regarded, for any purposes, as being either a “staff member” of UNCDF, under the UN’ Staff Regulations and Rules, or an “official” of UNCDF, for purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between UNCDF and the Individual contractor. The officials, representatives, employees or subcontractors of UNDP and of the Individual contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and UNCDF and the Individual contractor shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. STANDARDS OF CONDUCT: In General: The Individual contractor shall neither seek nor accept instructions from any authority external to UNCDF in connection with the performance of its obligations under the Contract. Should any authority external to UNCDF seek to impose any instructions on the Contract regarding the Individual contractor’s performance under the Contract, the Individual contractor shall promptly notify UNCDF and shall provide all reasonable assistance required by UNCDF. The Individual contractor shall not take any action in respect of its performance of the Contract or otherwise related to its obligations under the Contract that may adversely affect the interests of UNCDF, and the Individual contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNCDF. The Individual 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 UNCDF. The Individual contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In the performance of the Contract the Individual contractor shall comply with the standards of conduct set in the Secretary General’s Bulletin ST/SGB/2002/9 of 18 June 2002, entitled “Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Expert on Mission”. The individual contractor must comply with all Security Directives issued by UNCDF. Failure to comply with such security directives is grounds for termination of the Contract for cause.

Prohibition of Sexual Exploitation and Abuse: In the performance of the Contract, the Individual contractor shall comply with the standards of conduct set forth in the Secretary-General’s bulletin ST/SGB/2003/13 of 9 October 2003, concerning “Special measures for protection from sexual exploitation and sexual abuse”. In particular, the Individual contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

The Individual contractor acknowledges and agrees that any breach of any of the provisions hereof shall constitute a breach of an essential term of the Contract, and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for termination of the Contract. In addition, nothing herein shall limit the right of UNDP to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

3. TITLE RIGHTS, COPYRIGHTS, PATENTS AND OTHER PROPRIETARY RIGHTS: Title to any equipment and supplies that may be furnished by UNCDF to the Individual contractor for the performance of any obligations under the Contract shall rest with UNCDF, and any such equipment shall be returned to UNCDF at the conclusion of the Contract or when no longer needed by the Individual contractor. Such equipment, when returned to UNCDF, shall be in the same condition as when delivered to the Individual contractor, subject to normal wear and tear, and the Individual contractor shall be liable to compensate UNCDF for any damage or degradation of the equipment that is beyond normal wear and tear.

UNCDF 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 Individual contractor has developed for UNCDF 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, and the Individual contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNCDF. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Individual contractor: (a) that pre-existed the performance by the Individual

contractor of its obligations under the Contract, or (b) that the Individual contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, UNCDF does not and shall not claim any ownership interest thereto, and the Individual contractor grants to UNCDF a perpetual licence to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract. At the request of UNCDF, the Individual contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNCDF in compliance with the requirements of the applicable law and of the Contract. 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 Individual contractor under the Contract shall be the property of UNCDF, shall be made available for use or inspection by UNCDF at reasonable times and in reasonable places, shall be treated as confidential and shall be delivered only to UNCDF authorized officials on completion of work under the Contract

4. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION: Information and data that are considered proprietary by either UNCDF or the Individual contractor or that are delivered or disclosed by one of them (“Discloser”) to the other (“Recipient”) during the course of performance of the Contract, and that are designated as confidential (“Information”), shall be held in confidence and shall be handled as follows. The Recipient of such Information shall 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 the Recipient may otherwise use the Discloser’s Information solely for the purpose for which it was disclosed. The Recipient may disclose confidential Information to any other party with the Discloser’s prior written consent, as well as to the Recipient’s employees, officials, representatives and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Contract. Subject to and without any waiver of the privileges and immunities of UNCDF, the Individual contractor may disclose Information to the extent required by law, *provided that* the Individual contractor will give UNCDF sufficient prior notice of a request for the disclosure of Information in order to allow UNCDF to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. UNCDF may disclose Information to the extent as required pursuant to the Charter of the United Nations, resolutions or regulations of the General Assembly or its other governing bodies, or rules promulgated by the Secretary-General. 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. 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.

5. TRAVEL, MEDICAL CLEARANCE AND SERVICE INCURRED DEATH, INJURY OR ILLNESS: If the Individual contractor is required by UNCDF to travel beyond commuting distance from the Individual contractor’s usual place of residence, and upon prior written agreement, such travel shall be at the expense of UNCDF. Such travel shall be at economy care when by air. UNCDF may require the Individual contractor to submit a Statement of Good Health from a recognized physician prior to commencement of work in any offices or premises of UNCDF or before engaging in any travel required by UNCDF or connected with the performance of the Contract. The Individual contractor shall provide such a Statement of Good Health as soon as practicable following such request, and prior to engaging in any such travel, and the Individual contractor warrants the accuracy of any such Statement, including, but not limited to, confirmation that the Individual contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized. In the event of the death, injury or illness of the Individual contractor which is attributable to the performance of services on behalf of UNCDF under the terms of the Contract while the Individual contractor is traveling at UNCDF expense or is performing any services under the Contract in any offices or premises of UNCDF, the Individual contractor or the Individual contractor’s dependants, as appropriate, shall be entitled to compensation equivalent to that provided under the UNCDF insurance policy, available upon request.

6. PROHIBITION ON ASSIGNMENT; MODIFICATIONS: The Individual contractor may not assign, delegate, transfer, pledge or make any other disposition of the Contract, of any part thereof, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNCDF, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licences or other forms of Contract concerning any goods or services to be provided under the Contract shall not be valid and enforceable against UNCDF nor in any way shall constitute an Contract by UNCDF thereto, unless any such undertakings, licences or other forms of Contract are the subject of a valid written undertaking by UNCDF. No modification or change in the Contract shall be valid and enforceable against UNCDF unless provided by means of a valid written amendment to the Contract signed by the Individual contractor and an authorized official or appropriate contracting authority of UNCDF.

7. SUBCONTRACTORS: In the event that the Individual contractor requires the services of subcontractors to perform any obligations under the Contract, the Individual contractor shall obtain the prior written approval of UNCDF for any such subcontractors. UNCDF may, in its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefore, and such rejection shall not entitle the Individual 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. The Individual 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.

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

9. INDEMNIFICATION: The Individual contractor shall indemnify, defend, and hold and save harmless UNCDF, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to: (a) allegations or claims that the use by UNCDF of any patented device, any copyrighted material or any other goods or services provided to UNCDF for its use under the terms of the Contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or (b) any acts or omissions of the Individual contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

10. INSURANCE: The Individual contractor shall pay UNCDF promptly for all loss, destruction or damage to the property of UNCDF caused by the Individual contractor, or of any subcontractor, or anyone directly or indirectly employed by them in the performance of the Contract. The Individual contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of its obligations under the Contract, as well as for arranging, at the Individual contractor's sole expense, such life, health and other forms of insurance as the Individual contractor may consider to be appropriate to cover the period during which the Individual contractor provides services under the Contract. The Individual contractor acknowledges and agrees that none of the insurance arrangements the Individual contractor may make shall, in any way, be construed to limit the Individual contractor's liability arising under or relating to the Contract.

11. ENCUMBRANCES AND LIENS: The Individual 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 UNCDF against any monies due to the Individual contractor or to 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 Individual contractor.

12. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS: In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Individual contractor shall give notice and full particulars in writing to UNCDF of such occurrence or cause if the Individual contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The Individual contractor shall also notify UNCDF of any other changes in conditions 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 conditions or occurrence, the Individual contractor shall also submit a statement to UNCDF of estimated expenditures that will likely be

incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, UNCDF shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Individual contractor of a reasonable extension of time in which to perform any obligations under the Contract.

In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Individual contractor shall give notice and full particulars in writing to UNCDF of such occurrence or cause if the Individual contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The Individual contractor shall also notify UNCDF of any other changes in conditions 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 conditions or occurrence, the Individual contractor shall also submit a statement to UNCDF of estimated expenditures that will likely be incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, UNCDF shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Individual contractor of a reasonable extension of time in which to perform any obligations under the Contract.

Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, 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 Individual contractor. The Individual contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Individual contractor must perform in or for any areas in which UNCDF is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delay 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: Either party may terminate the Contract, in whole or in part, upon giving written notice to the other party. The period of notice shall be five (5) days in the case of Contracts for a total period of less than two (2) months and fourteen (14) days in the case of contracts for a longer period. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract. UNCDF may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that: (a) the Individual contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, applies for moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent; (b) the Individual contractor is granted a moratorium or a stay or is declared insolvent; the Individual contractor makes an assignment for the benefit of one or more of its creditors; (c) a Receiver is appointed on account of the insolvency of the Individual contractor; (d) the Individual contractor offers a settlement in lieu of bankruptcy or receivership; or (e) UNCDF reasonably determines that the Individual contractor has become subject to a materially adverse change in its financial condition that threatens to endanger or otherwise substantially affect the ability of the Individual contractor to perform any of its obligations under the Contract.

In the event of any termination of the Contract, upon receipt of notice of termination by UNCDF, the Individual contractor shall, except as may be directed by UNCDF in the notice of termination or otherwise in writing: (a) 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; (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice; (c) 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 UNCDF thereunder; (d) complete performance of the work not terminated; and (e) take any other action that may be necessary, or that UNCDF may direct in writing, for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Individual contractor and in which UNCDF has or may be reasonably expected to acquire an interest.

In the event of any termination of the Contract, UNCDF shall only be liable to pay the Individual contractor compensation on a pro rata basis for no more than the actual amount of work performed to the satisfaction of UNCDF in accordance with the requirements of the Contract. Additional costs incurred by UNCDF resulting from the termination of the Contract by the Individual contractor may be withheld from any amount otherwise due to the Individual contractor from UNCDF.

14. NON-EXCLUSIVITY: UNCDF shall have no obligation respecting, and no limitations on, its right to obtain goods of the same kind, quality and quantity, or to obtain any services of the kind described in the Contract, from any other source at any time.

15. TAXATION: 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 Individual contractor shall immediately consult with UNCDF to determine a mutually acceptable procedure. UNCDF shall have no liability for taxes, duties or other similar charges payable by the Individual contractor in respect of any amounts paid to the Individual contractor under this Contract, and the Individual contractor acknowledges that UNCDF will not issue any statements of earnings to the Individual contractor in respect of any such payments.

16. AUDITS AND INVESTIGATIONS:

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

The Individual contractor acknowledges and agrees that, from time to time, UNCDF 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 Individual contractor generally relating to performance of the Contract. The right of UNCDF to conduct an investigation and the Individual contractor's obligation to comply with such an investigation shall not lapse upon expiration or prior termination of the Contract. The Individual 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 Individual 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 UNCDF access to the Individual contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Individual contractor's personnel and relevant documentation. The Individual contractor shall require its agents, including, but not limited to, the Individual contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNCDF hereunder.

17. SETTLEMENT OF DISPUTES:

AMICABLE SETTLEMENT: UNCDF and the Individual contractor 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.

ARBITRATION: Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties 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. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") and Article 32 ("Form and Effect of the Award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

18. 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.

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