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Resilient nations.*

# INVITATION TO BID

## **Procurement of pharmaceuticals (3 lots)**

ITB No.: 117-2018-UNDP-UKR

Project: Procurement Support to the Ministry of Health of Ukraine – United Nations  
Development Programme in Ukraine

Country: Ukraine

Issued on: 26 December 2018

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## Section I. Letter of Invitation

The United Nations Development Programme (UNDP) hereby invites you to submit a Bid to this Invitation to Bid (ITB) for the above-referenced subject.

This ITB includes the following documents and the General Terms and Conditions of Contract which is inserted in the Bid Data Sheet:

- Section 1: This Letter of Invitation
- Section 2: Instruction to Bidders
- Section 3: Bid Data Sheet (BDS)
- Section 4: Schedule of Requirements and Technical Specifications
- Section 5: Returnable Bidding Forms/ Checklist and Evaluation Criteria
  - o Form A: Bid Submission Form
  - o Form B: Bidder Information Form
  - o Form C: Joint Venture/Consortium/Association Information Form
  - o Form D: Qualification Form
  - o Form E: Format of Technical Bid
  - o Form F: Price Schedule
- Section 6: Form for Performance Security
- Section 7: Template of Purchase Order, including General Terms and Conditions

If you are interested in submitting a Bid in response to this ITB, please prepare your Bid in accordance with the requirements and procedure as set out in this ITB and submit it by the Deadline for Submission of Bids set out in Bid Data Sheet.

Please acknowledge receipt of this ITB by sending an email to [health.procurement.ua@undp.org](mailto:health.procurement.ua@undp.org) , indicating whether you intend to submit a Bid or otherwise. Should you require further clarifications, kindly communicate with the contact person/s identified in the attached Data Sheet as the focal point for queries on this ITB.

UNDP looks forward to receiving your Bid and thank you in advance for your interest in UNDP procurement opportunities.

Approved by:

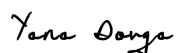


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## Section 2. Instruction to Bidders

### A. GENERAL PROVISIONS

<b>1. Introduction</b>	<p>1.1 Bidders shall adhere to all the requirements of this ITB, including any amendments made in writing by UNDP. This ITB is conducted in accordance with the UNDP Programme and Operations Policies and Procedures (POPP) on Contracts and Procurement which can be accessed at <a href="https://popp.undp.org/SitePages/POPPBSUnit.aspx?TermID=254a9f96-b883-476a-8ef8-e81f93a2b38d">https://popp.undp.org/SitePages/POPPBSUnit.aspx?TermID=254a9f96-b883-476a-8ef8-e81f93a2b38d</a></p> <p>1.2 Any Bid submitted will be regarded as an offer by the Bidder and does not constitute or imply the acceptance of the Bid by UNDP. UNDP is under no obligation to award a contract to any Bidder as a result of this ITB.</p> <p>1.3 UNDP reserves the right to cancel the procurement process at any stage without any liability of any kind for UNDP, upon notice to the bidders or publication of cancellation notice on UNDP website.</p> <p>1.4 As part of the bid, it is desired that the Bidder registers at the United Nations Global Marketplace (UNGM) website (<a href="http://www.ungm.org">www.ungm.org</a>). The Bidder may still submit a bid even if not registered with the UNGM. However, if the Bidder is selected for contract award, the Bidder must register on the UNGM prior to contract signature.</p>
<b>2. Fraud &amp; Corruption, Gifts and Hospitality</b>	<p>2.1 UNDP strictly enforces a policy of zero tolerance on proscribed practices, including fraud, corruption, collusion, unethical or unprofessional practices, and obstruction of UNDP vendors and requires all bidders/vendors observe the highest standard of ethics during the procurement process and contract implementation. UNDP's Anti-Fraud Policy can be found at <a href="http://www.undp.org/content/undp/en/home/operations/accountability/audit/office_of_audit_andinvestigation.html#anti">http://www.undp.org/content/undp/en/home/operations/accountability/audit/office_of_audit_andinvestigation.html#anti</a></p> <p>2.2 Bidders/vendors shall not offer gifts or hospitality of any kind to UNDP staff members including recreational trips to sporting or cultural events, theme parks or offers of holidays, transportation, or invitations to extravagant lunches or dinners.</p> <p>2.3 In pursuance of this policy, UNDP:</p> <p>(a) Shall reject a bid if it determines that the selected bidder has engaged in any corrupt or fraudulent practices in competing for the contract in question;</p> <p>(b) Shall declare a vendor ineligible, either indefinitely or for a stated period, to be awarded a contract if at any time it determines that the vendor has engaged in any corrupt or fraudulent practices in competing for, or in executing a UNDP contract.</p> <p>2.4 All Bidders must adhere to the UN Supplier Code of Conduct, which may be found at <a href="http://www.un.org/depts/ptd/pdf/conduct_english.pdf">http://www.un.org/depts/ptd/pdf/conduct_english.pdf</a></p>
<b>3. Eligibility</b>	<p>3.1 A vendor should not be suspended, debarred, or otherwise identified as ineligible by any UN Organization or the World Bank Group or any other international Organization. Vendors are therefore required to disclose to UNDP whether they are subject to any sanction or temporary suspension imposed by</p>

	<p>these organizations.</p> <p>3.2 It is the Bidder's responsibility to ensure that its employees, joint venture members, sub-contractors, service providers, suppliers and/or their employees meet the eligibility requirements as established by UNDP.</p>
<b>4. Conflict of Interests</b>	<p>4.1 Bidders must strictly avoid conflicts with other assignments or their own interests, and act without consideration for future work. Bidders found to have a conflict of interest shall be disqualified. Without limitation on the generality of the above, Bidders, and any of their affiliates, shall be considered to have a conflict of interest with one or more parties in this solicitation process, if they:</p> <ul style="list-style-type: none"> <li>a) Are or have been associated in the past, with a firm or any of its affiliates which have been engaged by UNDP to provide services for the preparation of the design, specifications, Terms of Reference, cost analysis/estimation, and other documents to be used for the procurement of the goods and services in this selection process;</li> <li>b) Were involved in the preparation and/or design of the programme/project related to the goods and/or services requested under this ITB; or</li> <li>c) Are found to be in conflict for any other reason, as may be established by, or at the discretion of UNDP.</li> </ul> <p>4.2 In the event of any uncertainty in the interpretation of a potential conflict of interest, Bidders must disclose to UNDP, and seek UNDP's confirmation on whether or not such conflict exists.</p> <p>4.3 Similarly, the Bidders must disclose in their Bid their knowledge of the following:</p> <ul style="list-style-type: none"> <li>a) If the owners, part-owners, officers, directors, controlling shareholders, of the bidding entity or key personnel who are family members of UNDP staff involved in the procurement functions and/or the Government of the country or any Implementing Partner receiving goods and/or services under this ITB; and</li> <li>b) All other circumstances that could potentially lead to actual or perceived conflict of interest, collusion or unfair competition practices.</li> </ul> <p>Failure to disclose such an information may result in the rejection of the Bid or Bids affected by the non-disclosure.</p> <p>4.4 The eligibility of Bidders that are wholly or partly owned by the Government shall be subject to UNDP's further evaluation and review of various factors such as being registered, operated and managed as an independent business entity, the extent of Government ownership/share, receipt of subsidies, mandate and access to information in relation to this ITB, among others. Conditions that may lead to undue advantage against other Bidders may result in the eventual rejection of the Bid.</p>
<b>B. PREPARATION OF BIDS</b>	
<b>5. General Considerations</b>	<p>5.1 In preparing the Bid, the Bidder is expected to examine the ITB in detail. Material deficiencies in providing the information requested in the ITB may result in rejection of the Bid.</p> <p>5.2 The Bidder will not be permitted to take advantage of any errors or omissions in the ITB. Should such errors or omissions be discovered, the Bidder must notify the UNDP accordingly.</p>

<b>6. Cost of Preparation of Bid</b>	6.1 The Bidder shall bear all costs related to the preparation and/or submission of the Bid, regardless of whether its Bid is selected or not. UNDP shall not be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.
<b>7. Language</b>	7.1 The Bid, as well as any and all related correspondence exchanged by the Bidder and UNDP, shall be written in the language (s) specified in the BDS.
<b>8. Documents Comprising the Bid</b>	8.1 The Bid shall comprise of the following documents and related forms which details are provided in the BDS: <ul style="list-style-type: none"> <li>a) Documents Establishing the Eligibility and Qualifications of the Bidder;</li> <li>b) Technical Bid;</li> <li>c) Price Schedule;</li> <li>d) Bid Security, if required by BDS;</li> <li>e) Any attachments and/or appendices to the Bid.</li> </ul>
<b>9. Documents Establishing the Eligibility and Qualifications of the Bidder</b>	9.1 The Bidder shall furnish documentary evidence of its status as an eligible and qualified vendor, using the Forms provided under Section 6 and providing documents required in those forms. In order to award a contract to a Bidder, its qualifications must be documented to UNDP's satisfaction.
<b>10. Technical Bid Format and Content</b>	<p>10.1 The Bidder is required to submit a Technical Bid using the Standard Forms and templates provided in Section 5 of the ITB.</p> <p>10.2 Samples of items, if required as per Section 5, shall be provided within the time specified and unless otherwise specified by UNDP, at no expense to the UNDP. If not destroyed by testing, samples will be returned at Bidder's request and expense, unless otherwise specified.</p> <p>10.3 When applicable and required as per Section 5, the Bidder shall describe the necessary training programme available for the maintenance and operation of the equipment offered as well as the cost to the UNDP. Unless otherwise specified, such training as well as training materials shall be provided in the language of the Bid as specified in the BDS.</p> <p>10.4 When applicable and required as per Section 5, the Bidder shall certify the availability of spare parts for a period of at least five (5) years from date of delivery, or as otherwise specified in this ITB.</p>
<b>11. Price Schedule</b>	<p>11.1 The Price Schedule shall be prepared using the Form provided in Section 5 of the ITB and taking into consideration the requirements in the ITB.</p> <p>11.2 Any requirement described in the Technical Bid but not priced in the Price Schedule, shall be assumed to be included in the prices of other activities or items, as well as in the final total price.</p>
<b>12. Bid Security</b>	<p>12.1 A Bid Security, if required by BDS, shall be provided in the amount and form indicated in the BDS. The Bid Security shall be valid for a minimum of thirty (30) days after the final date of validity of the Bid.</p> <p>12.2 The Bid Security shall be included along with the Bid. If Bid Security is required by the ITB but is not found in the Bid, the offer shall be rejected.</p>

	<p>12.3 If the Bid Security amount or its validity period is found to be less than what is required by UNDP, UNDP shall reject the Bid.</p> <p>12.4 In the event an electronic submission is allowed in the BDS, Bidders shall include a copy of the Bid Security in their bid and the original of the Bid Security must be sent via courier or hand delivery as per the instructions in BDS.</p> <p>12.5 The Bid Security may be forfeited by UNDP, and the Bid rejected, in the event of any, or combination, of the following conditions:</p> <ul style="list-style-type: none"> <li>a) If the Bidder withdraws its offer during the period of the Bid Validity specified in the BDS, or;</li> <li>b) In the event the successful Bidder fails: <ul style="list-style-type: none"> <li>i. to sign the Contract after UNDP has issued an award; or</li> <li>ii. to furnish the Performance Security, insurances, or other documents that UNDP may require as a condition precedent to the effectivity of the contract that may be awarded to the Bidder.</li> </ul> </li> </ul>
<b>13. Currencies</b>	<p>13.1 All prices shall be quoted in the currency or currencies indicated in the BDS. Where Bids are quoted in different currencies, for the purposes of comparison of all Bids:</p> <ul style="list-style-type: none"> <li>a) UNDP will convert the currency quoted in the Bid into the UNDP preferred currency, in accordance with the prevailing UN operational rate of exchange on the last day of submission of Bids; and</li> <li>b) In the event that UNDP selects a Bid for award that is quoted in a currency different from the preferred currency in the BDS, UNDP shall reserve the right to award the contract in the currency of UNDP's preference, using the conversion method specified above.</li> </ul>
<b>14. Joint Venture, Consortium or Association</b>	<p>14.1 If the Bidder is a group of legal entities that will form or have formed a Joint Venture (JV), Consortium or Association for the Bid, they shall confirm in their Bid that : (i) they have designated one party to act as a lead entity, duly vested with authority to legally bind the members of the JV, Consortium or Association jointly and severally, which shall be evidenced by a duly notarized Agreement among the legal entities, and submitted with the Bid; and (ii) if they are awarded the contract, the contract shall be entered into, by and between UNDP and the designated lead entity, who shall be acting for and on behalf of all the member entities comprising the joint venture.</p> <p>14.2 After the Deadline for Submission of Bid, the lead entity identified to represent the JV, Consortium or Association shall not be altered without the prior written consent of UNDP.</p> <p>14.3 The lead entity and the member entities of the JV, Consortium or Association shall abide by the provisions of Clause 9 herein in respect of submitting only one Bid.</p> <p>14.4 The description of the organization of the JV, Consortium or Association must clearly define the expected role of each of the entities in the joint venture in delivering the requirements of the ITB, both in the Bid and the JV, Consortium or Association Agreement. All entities that comprise the JV, Consortium or Association shall be subject to the eligibility and qualification assessment by UNDP.</p> <p>14.5 A JV, Consortium or Association in presenting its track record and experience</p>

	<p>should clearly differentiate between:</p> <ul style="list-style-type: none"> <li>a) Those that were undertaken together by the JV, Consortium or Association; and</li> <li>b) Those that were undertaken by the individual entities of the JV, Consortium or Association.</li> </ul> <p>14.6 Previous contracts completed by individual experts working privately but who are permanently or were temporarily associated with any of the member firms cannot be claimed as the experience of the JV, Consortium or Association or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.</p> <p>14.7 JV, Consortium or Associations are encouraged for high value, multi-sectoral requirements when the spectrum of expertise and resources required may not be available within one firm.</p>
<b>15. Only One Bid</b>	<p>15.1 The Bidder (including the individual members of any Joint Venture) shall submit only one Bid, either in its own name or as part of a Joint Venture.</p> <p>15.2 Bids submitted by two (2) or more Bidders shall all be rejected if they are found to have any of the following:</p> <ul style="list-style-type: none"> <li>a) they have at least one controlling partner, director or shareholder in common; or</li> <li>b) any one of them receive or have received any direct or indirect subsidy from the other/s; or</li> <li>c) they have the same legal representative for purposes of this ITB; or</li> <li>d) they have a relationship with each other, directly or through common third parties, that puts them in a position to have access to information about, or influence on the Bid of another Bidder regarding this ITB process;</li> <li>e) they are subcontractors to each other's Bid, or a subcontractor to one Bid also submits another Bid under its name as lead Bidder; or some key personnel proposed to be in the team of one Bidder participates in more than one Bid received for this ITB process. This condition relating to the personnel, does not apply to subcontractors being included in more than one Bid.</li> </ul>
<b>16. Bid Validity Period</b>	<p>16.1 Bids shall remain valid for the period specified in the BDS, commencing on the Deadline for Submission of Bids. A Bid valid for a shorter period may be rejected by UNDP and rendered non-responsive.</p> <p>16.2 During the Bid validity period, the Bidder shall maintain its original Bid without any change, including the availability of the Key Personnel, the proposed rates and the total price.</p>
<b>17. Extension of Bid Validity Period</b>	<p>17.1 In exceptional circumstances, prior to the expiration of the Bid validity period, UNDP may request Bidders to extend the period of validity of their Bids. The request and the responses shall be made in writing and shall be considered integral to the Bid.</p> <p>17.2 If the Bidder agrees to extend the validity of its Bid, it shall be done without any change to the original Bid.</p> <p>17.3 The Bidder has the right to refuse to extend the validity of its Bid, in which case, the Bid shall not be further evaluated.</p>



<b>18. Clarification of Bid (from the Bidders)</b>	<p>18.1 Bidders may request clarifications on any of the ITB documents no later than the date indicated in the BDS. Any request for clarification must be sent in writing in the manner indicated in the BDS. If inquiries are sent other than specified channel, even if they are sent to a UNDP staff member, UNDP shall have no obligation to respond or confirm that the query was officially received.</p> <p>18.2 UNDP will provide the responses to clarifications through the method specified in the BDS.</p> <p>18.3 UNDP shall endeavor to provide responses to clarifications in an expeditious manner, but any delay in such response shall not cause an obligation on the part of UNDP to extend the submission date of the Bids, unless UNDP deems that such an extension is justified and necessary.</p>
<b>19. Amendment of Bids</b>	<p>19.1 At any time prior to the deadline of Bid submission, UNDP may for any reason, such as in response to a clarification requested by a Bidder, modify the ITB in the form of an amendment to the ITB. Amendments will be made available to all prospective bidders.</p> <p>19.2 If the amendment is substantial, UNDP may extend the Deadline for submission of Bid to give the Bidders reasonable time to incorporate the amendment into their Bids.</p>
<b>20. Alternative Bids</b>	<p>20.1 Unless otherwise specified in the BDS, alternative Bids shall not be considered. If submission of alternative Bid is allowed by BDS, a Bidder may submit an alternative Bid, but only if it also submits a Bid conforming to the ITB requirements. Where the conditions for its acceptance are met, or justifications are clearly established, UNDP reserves the right to award a contract based on an alternative Bid.</p> <p>20.2 If multiple/alternative bids are being submitted, they must be clearly marked as "Main Bid" and "Alternative Bid"</p>
<b>21. Pre-Bid Conference</b>	<p>21.1 When appropriate, a pre-bid conference will be conducted at the date, time and location specified in the BDS. All Bidders are encouraged to attend. Non-attendance, however, shall not result in disqualification of an interested Bidder. Minutes of the Bidder's conference will be disseminated on the procurement website and shared by email or on the e-Tendering platform as specified in the BDS. No verbal statement made during the conference shall modify the terms and conditions of the ITB, unless specifically incorporated in the Minutes of the Bidder's Conference or issued/posted as an amendment to ITB.</p>

## c. SUBMISSION AND OPENING OF BIDS

<b>22. Submission</b>	<p>22.1 The Bidder shall submit a duly signed and complete Bid comprising the documents and forms in accordance with requirements in the BDS. The Price Schedule shall be submitted together with the Technical Bid. Bid can be delivered either personally, by courier, or by electronic method of transmission as specified in the BDS.</p> <p>22.2 The Bid shall be signed by the Bidder or person(s) duly authorized to commit the Bidder. The authorization shall be communicated through a document evidencing such authorization issued by the legal representative of the bidding entity, or a Power of Attorney, accompanying the Bid.</p> <p>22.3 Bidders must be aware that the mere act of submission of a Bid, in and of itself, implies that the Bidder fully accepts the UNDP General Contract Terms and Conditions.</p>
<b>Hard copy (manual) submission</b> <b>Not applicable</b>	<p>22.4 Hard copy (manual) submission by courier or hand delivery allowed as specified in the BDS and then shall be governed as follows:</p> <p>a) The signed Bid shall be marked "Original", and its copies marked "Copy" as appropriate. The number of copies is indicated in the BDS. All copies shall be made from the signed original only. If there are discrepancies between the original and the copies, the original shall prevail.</p> <p>(b) The Technical Bid and Price Schedule must be sealed and submitted together in an envelope, which shall:</p> <ol style="list-style-type: none"> <li>i. Bear the name of the Bidder;</li> <li>ii. Be addressed to UNDP as specified in the BDS; and</li> <li>iii. Bear a warning not to open before the time and date for Bid opening as specified in the BDS.</li> </ol> <p>If the envelope with the Bid is not sealed and marked as required, UNDP shall assume no responsibility for the misplacement, loss, or premature opening of the Bid.</p>
<b>Email and eTendering submissions</b> <b>Email submission is applicable</b>	<p>22.5 Electronic submission through email or eTendering, if allowed as specified in the BDS, shall be governed as follows:</p> <ol style="list-style-type: none"> <li>a) Electronic files that form part of the Bid must be in accordance with the format and requirements indicated in BDS;</li> <li>b) Documents which are required to be in original form (e.g. Bid Security, etc.) must be sent via courier or hand delivered as per the instructions in BDS.</li> </ol> <p>22.6 Detailed instructions on how to submit, modify or cancel a bid in the eTendering system are provided in the eTendering system Bidder User Guide and Instructional videos available on this link:  <a href="http://www.undp.org/content/undp/en/home/operations/procurement/business/procurement-notices/resources/">http://www.undp.org/content/undp/en/home/operations/procurement/business/procurement-notices/resources/</a></p>
<b>23. Deadline for Submission of Bids and Late Bids</b>	<p>23.1 Complete Bids must be received by UNDP in the manner, and no later than the date and time, specified in the BDS. UNDP shall only recognise the actual date and time that the bid was received by UNDP</p> <p>23.2 UNDP shall not consider any Bid that is received after the deadline for the</p>

	submission of Bids.
<b>24. Withdrawal, Substitution, and Modification of Bids</b>	<p>24.1 A Bidder may withdraw, substitute or modify its Bid after it has been submitted at any time prior to the deadline for submission.</p> <p>24.2 Manual and Email submissions: A bidder may withdraw, substitute or modify its Bid by sending a written notice to UNDP, duly signed by an authorized representative, and shall include a copy of the authorization (or a Power of Attorney). The corresponding substitution or modification of the Bid, if any, must accompany the respective written notice. All notices must be submitted in the same manner as specified for submission of Bids, by clearly marking them as "WITHDRAWAL" "SUBSTITUTION," or "MODIFICATION"</p> <p>24.3 eTendering: A Bidder may withdraw, substitute or modify its Bid by Cancelling, Editing, and re-submitting the Bid directly in the system. It is the responsibility of the Bidder to properly follow the system instructions, duly edit and submit a substitution or modification of the Bid as needed. Detailed instructions on how to cancel or modify a Bid directly in the system are provided in the Bidder User Guide and Instructional videos.</p> <p>24.4 Bids requested to be withdrawn shall be returned unopened to the Bidders (only for manual submissions), except if the bid is withdrawn after the bid has been opened.</p>
<b>25. Bid Opening</b>	<p>25.1 UNDP will open the Bid in the presence of an ad-hoc committee formed by UNDP of at least two (2) members.</p> <p>25.2 The Bidders' names, modifications, withdrawals, the condition of the envelope labels/seals, the number of folders/files and all other such other details as UNDP may consider appropriate, will be announced at the opening. No Bid shall be rejected at the opening stage, except for late submissions, in which case, the Bid shall be returned unopened to the Bidders.</p> <p>25.3 In the case of e-Tendering submission, bidders will receive an automatic notification once the Bid is opened if stated in BDS.</p>
<b>D. EVALUATION OF BIDS</b>	
<b>26. Confidentiality</b>	<p>26.1 Information relating to the examination, evaluation, and comparison of Bids, and the recommendation of contract award, shall not be disclosed to Bidders or any other persons not officially concerned with such process, even after publication of the contract award.</p> <p>26.2 Any effort by a Bidder or anyone on behalf of the Bidder to influence UNDP in the examination, evaluation and comparison of the Bids or contract award decisions may, at UNDP's decision, result in the rejection of its Bid and may subsequently be subject to the application of prevailing UNDP's vendor sanctions procedures.</p>
<b>27. Evaluation of Bids</b>	<p>27.1 UNDP will conduct the evaluation solely on the basis of the Bids received.</p> <p>27.2 Evaluation of Bids shall be undertaken in the following steps:</p> <ul style="list-style-type: none"> <li>a) Preliminary Examination including Eligibility</li> <li>b) Arithmetical check and ranking of bidders who passed preliminary examination by price.</li> </ul>

	<ul style="list-style-type: none"> <li>c) Qualification assessment (if pre-qualification was not done)</li> <li>a) Evaluation of Technical Bids</li> <li>b) Evaluation of prices</li> </ul> <p>Detailed evaluation will be focussed on the 3 - 5 lowest priced bids. Further higher priced bids shall be added for evaluation if necessary</p>
<b>28. Preliminary Examination</b>	<p>28.1 UNDP shall examine the Bids to determine whether they are complete with respect to minimum documentary requirements, whether the documents have been properly signed, and whether the Bids are generally in order, among other indicators that may be used at this stage. UNDP reserves the right to reject any Bid at this stage.</p>
<b>29. Evaluation of Eligibility and Qualification</b>	<p>29.1 Eligibility and Qualification of the Bidder will be evaluated against the Minimum Eligibility/Qualification requirements specified in the Section 5 (Evaluation Criteria).</p> <p>29.2 In general terms, vendors that meet the following criteria may be considered qualified:</p> <ul style="list-style-type: none"> <li>a) They are not included in the UN Security Council 1267/1989 Committee's list of terrorists and terrorist financiers, and in UNDP's ineligible vendors' list;</li> <li>b) They have a good financial standing and have access to adequate financial resources to perform the contract and all existing commercial commitments;</li> <li>c) They have the necessary similar experience, technical expertise, production capacity, quality assurance certifications and other resources applicable to the supply of goods and/or services required;</li> <li>d) They are able to comply fully with the UNDP General Terms and Conditions of Contract;</li> <li>e) They are able to comply with UNDP QA policy;</li> <li>f) They do not have a consistent history of court/arbitral award decisions against the Bidder; and</li> <li>g) They have a record of timely and satisfactory performance with their clients.</li> </ul>
<b>30. Evaluation of Technical Bid and prices</b>	<p>30.1 The evaluation team shall review and evaluate the Technical Bids on the basis of their responsiveness to the Schedule of Requirements and Technical Specifications and other documentation provided, applying the procedure indicated in the BDS and other ITB documents. When necessary, and if stated in the BDS, UNDP may invite technically responsive bidders for a presentation related to their technical Bids. The conditions for the presentation shall be provided in the bid document where required.</p>
<b>31. Due diligence</b>	<p>31.1 UNDP reserves the right to undertake a due diligence exercise, aimed at determining to its satisfaction, the validity of the information provided by the Bidder. Such exercise shall be fully documented and may include, but need not be limited to, all or any combination of the following:</p> <ul style="list-style-type: none"> <li>a) Verification of accuracy, correctness and authenticity of information provided by the Bidder;</li> <li>b) Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team;</li> <li>c) Inquiry and reference checking with Government entities with jurisdiction on the Bidder, or with previous clients, or any other entity that may have done business with the Bidder;</li> </ul>

	<ul style="list-style-type: none"> <li>d) Inquiry and reference checking with previous clients on the performance on on-going or completed contracts, including physical inspections of previous works, as deemed necessary;</li> <li>e) Physical inspection of the Bidder's offices, branches or other places where business transpires, with or without notice to the Bidder;</li> <li>f) Other means that UNDP may deem appropriate, at any stage within the selection process, prior to awarding the contract.</li> </ul>
<b>32. Clarification of Bids</b>	<p>32.1 To assist in the examination, evaluation and comparison of Bids, UNDP may, at its discretion, request any Bidder for a clarification of its Bid.</p> <p>32.2 UNDP's request for clarification and the response shall be in writing and no change in the prices or substance of the Bid shall be sought, offered, or permitted, except to provide clarification, and confirm the correction of any arithmetic errors discovered by UNDP in the evaluation of the Bids, in accordance with the ITB.</p> <p>32.3 Any unsolicited clarification submitted by a Bidder in respect to its Bid, which is not a response to a request by UNDP, shall not be considered during the review and evaluation of the Bids.</p>
<b>33. Responsiveness of Bid</b>	<p>33.1 UNDP's determination of a Bid's responsiveness will be based on the contents of the bid itself. A substantially responsive Bid is one that conforms to all the terms, conditions, specifications and other requirements of the ITB without material deviation, reservation, or omission.</p> <p>33.2 If a bid is not substantially responsive, it shall be rejected by UNDP and may not subsequently be made responsive by the Bidder by correction of the material deviation, reservation, or omission.</p>
<b>34. Nonconformities, Reparable Errors and Omissions</b>	<p>34.1 Provided that a Bid is substantially responsive, UNDP may waive any non-conformities or omissions in the Bid that, in the opinion of UNDP, do not constitute a material deviation.</p> <p>34.2 UNDP may request the Bidder to submit the necessary information or documentation, within a reasonable period, to rectify nonmaterial nonconformities or omissions in the Bid related to documentation requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may result in the rejection of its Bid.</p> <p>34.3 For the bids that have passed the preliminary examination, UNDP shall check, and correct arithmetical errors as follows:</p> <ul style="list-style-type: none"> <li>a) if there is a discrepancy between the unit price and the line item total that is obtained by multiplying the unit price by the quantity, the unit price shall prevail and the line item total shall be corrected, unless in the opinion of UNDP there is an obvious misplacement of the decimal point in the unit price; in which case, the line item total as quoted shall govern and the unit price shall be corrected;</li> <li>b) if there is an error in a total corresponding to the addition or subtraction of subtotals, the subtotals shall prevail, and the total shall be corrected; and</li> <li>c) if there is a discrepancy between words and figures, the amount in words shall prevail, unless the amount expressed in words is related to an arithmetic error, in which case the amount in figures shall prevail.</li> </ul>

	34.4 If the Bidder does not accept the correction of errors made by UNDP, its Bid shall be rejected.
<b>E. AWARD OF CONTRACT</b>	
<b>35. Right to Accept, Reject, Any or All Bids</b>	35.1 UNDP reserves the right to accept or reject any bid, to render any or all of the bids as non-responsive, and to reject all Bids at any time prior to award of contract, without incurring any liability, or obligation to inform the affected Bidder(s) of the grounds for UNDP's action. UNDP shall not be obliged to award the contract to the lowest priced offer.
<b>36. Award Criteria</b>	36.1 Prior to expiration of the period of Bid validity, UNDP shall award the contract to the qualified and eligible Bidder that is found to be responsive to the requirements of the Schedule of Requirements and Technical Specification, and has offered the lowest price.
<b>37. Debriefing</b>	37.1 In the event that a Bidder is unsuccessful, the Bidder may request for a debriefing from UNDP. The purpose of the debriefing is to discuss the strengths and weaknesses of the Bidder's submission, in order to assist the Bidder in improving its future Bids for UNDP procurement opportunities. The content of other Bids and how they compare to the Bidder's submission shall not be discussed.
<b>38. Right to Vary Requirements at the Time of Award</b>	38.1 At the time of award of Contract, UNDP reserves the right to vary the quantity of goods and/or services, by up to a maximum twenty-five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.
<b>39. Contract Signature</b>	39.1 Within fifteen (15) days from the date of receipt of the Contract, the successful Bidder shall sign and date the Contract and return it to UNDP. Failure to do so may constitute sufficient grounds for the annulment of the award, and forfeiture of the Bid Security, if any, and on which event, UNDP may award the Contract to the Second highest rated or call for new Bids.
<b>40. Contract Type and General Terms and Conditions</b>	40.1 The types of Contract to be signed and the applicable UNDP Contract General Terms and Conditions, as specified in BDS, can be accessed at <a href="http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html">http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html</a>
<b>41. Performance Security</b>	41.1 A performance security, if required in the BDS, shall be provided in the amount specified in BDS and form available at <a href="https://popp.undp.org/layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/PSU_Solicitation_Performance%20Guarantee%20Form.docx&amp;action=default">https://popp.undp.org/layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/PSU_Solicitation_Performance%20Guarantee%20Form.docx&amp;action=default</a> within a maximum of fifteen (15) days of the contract signature by both parties. Where a performance security is required, the receipt of the performance security by UNDP shall be a condition for rendering the contract effective.
<b>42. Bank Guarantee for Advanced Payment</b>	42.1 Except when the interests of UNDP so require, it is UNDP's standard practice to not make advance payment(s) (i.e., payments without having received any outputs). If an advance payment is allowed as per the BDS, and exceeds 20% of the total contract price, or USD 30,000, whichever is less, the Bidder shall submit a Bank Guarantee in the full amount of the advance payment in the form

	<p>available at  <a href="https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/PSU_Contract%20Management%20Payment%20and%20Taxes_Advanced%20Payment%20Guarantee%20Form.docx&amp;action=default">https://popp.undp.org/_layouts/15/WopiFrame.aspx?sourcedoc=/UNDP_POPP_DOCUMENT_LIBRARY/Public/PSU_Contract%20Management%20Payment%20and%20Taxes_Advanced%20Payment%20Guarantee%20Form.docx&amp;action=default</a></p>
<b>43. Liquidated Damages</b>	<p>43.1 If specified in the BDS, UNDP shall apply Liquidated Damages for the damages and/or risks caused to UNDP resulting from the Contractor's delays or breach of its obligations as per Contract.</p>
<b>44. Payment Provisions</b>	<p>44.1 Payment will be made only upon UNDP's acceptance of the goods and/or services performed. The terms of payment shall be within thirty (30) days, after receipt of invoice and certification of acceptance of goods and/or services issued by the proper authority in UNDP with direct supervision of the Contractor. Payment will be effected by bank transfer in the currency of the contract.</p>
<b>45. Vendor Protest</b>	<p>45.1 UNDP's vendor protest procedure provides an opportunity for appeal to those persons or firms not awarded a contract through a competitive procurement process. In the event that a Bidder believes that it was not treated fairly, the following link provides further details regarding UNDP vendor protest procedures:  <a href="http://www.undp.org/content/undp/en/home/procurement/business/protest-and-sanctions.html">http://www.undp.org/content/undp/en/home/procurement/business/protest-and-sanctions.html</a></p>
<b>46. Other Provisions</b>	<p>46.1 In the event that the Bidder offers a lower price to the host Government (e.g. General Services Administration (GSA) of the federal government of the United States of America) for similar goods and/or services, UNDP shall be entitled to the same lower price. The UNDP General Terms and Conditions shall have precedence.</p> <p>46.2 UNDP is entitled to receive the same pricing offered by the same Contractor in contracts with the United Nations and/or its Agencies. The UNDP General Terms and Conditions shall have precedence.</p> <p>46.3 The United Nations has established restrictions on employment of (former) UN staff who have been involved in the procurement process as per bulletin ST/SGB/2006/15  <a href="http://www.un.org/en/ga/search/view_doc.asp?symbol=ST/SGB/2006/15&amp;referer">http://www.un.org/en/ga/search/view_doc.asp?symbol=ST/SGB/2006/15&amp;referer</a></p>

## Section 3. Bid Data Sheet

The following data for the goods and/or services to be procured shall complement, supplement, or amend the provisions in the Invitation to Bid In the case of a conflict between the Instructions to Bidders, the Bid Data Sheet, and other annexes or references attached to the Bid Data Sheet, the provisions in the Bid Data Sheet shall prevail.

BDS No.	Ref. to Section.2	Data	Specific Instructions / Requirements
1	7	Language of the Bid	English Russian Ukrainian <b>English is the preferred language of the bid, with any other language documents where possible translated into English.</b>
2		Submitting Bids for Parts or sub-parts of the Schedule of Requirements (partial bids)	The Bidder may submit Bid for separate Lots.  However, Bidders are encouraged to quote for as many Lots/Items as possible.
3	20	Alternative Bids	Shall not be considered
4	21	Pre-Bid conference	Time: 15:00 by GMT+2 (Kyiv) time Date : January 09, 2019 Venue : Lviv meeting room; UN Office in Ukraine; 1 Klovskyi descent, Kyiv / Skype conference  Companies may participate at the pre-bid conference through skype conference. Interested companies should send confirmations by below email.  The UNDP focal point for the arrangement is: UNDP Procurement Unit Telephone: +38 044 2539363 (ext.577) E-mail: <a href="mailto:health.procurement.ua@undp.org">health.procurement.ua@undp.org</a>
5	16	Bid Validity Period	120 days
6	12	Bid Security	Not required



7	42	Advanced Payment upon signing of contract	Not Allowed
8	43	Liquidated Damages	<p>Will be imposed as follows:</p> <p>If the Supplier fails to supply the specified Goods within the time period(s) stipulated in the individual contract (Purchase Orders), the UNDP may without prejudice to its other remedies under the contract, deduct 0.5% of the complete consignment for each day of delay until actual delivery, up to maximum deduction of 10% of the value of the Purchase Order. Once the maximum is reached, UNDP may consider termination of the PO.</p> <p>Once the maximum is reached, UNDP may consider termination of the PO.</p>
9	41	Performance Security	<p>Will be required from winning entity for all contracts (Purchase Orders) exceeding 300,000 USD OR upon discretion of UNDP (e.g. product is not registered in the country of destination)</p> <p>Amount: 10 % of the contract (PO) amount</p> <p>Template is given in Section 6</p>
10	13	Currency of Bid	<p><b>United States Dollars (USD)</b> - strongly advised to use as a risk mitigation measure against the impact of the local currency devaluation.</p> <p><i>UNDP will execute payments in USD to international suppliers.</i></p> <p><i>Payments to local (Ukrainian) suppliers will be executed either in USD or UAH based on UN Operational Exchange Rate effective at the date of payment (please refer to <a href="http://treasury.un.org">treasury.un.org</a>). Please state in the financial bid preferred currency of payment.</i></p> <p><b>Local Currency (UAH)</b></p> <p><i>Prices submitted by Bidders will be evaluated versus each other based on UN Operational exchange rate effective at the closure day of the bid submission (please refer to <a href="http://treasury.un.org">treasury.un.org</a>)</i></p>
11	32	Deadline for submitting requests for clarifications/ questions	5 days before the submission deadline
12	32	Contact Details for submitting clarifications/questions	<p>Focal Person in UNDP:</p> <p>UNDP Health Procurement Unit</p> <p>E-mail: <a href="mailto:health.procurement.ua@undp.org">health.procurement.ua@undp.org</a></p>

13	19 and 21	Manner of Disseminating Supplemental Information to the ITB and responses/clarifications to queries	Direct communication to prospective Bidders by email, and Posting on <a href="http://procurement-notices.undp.org">http://procurement-notices.undp.org</a>
14	23	Deadline for Submission	<b><i>Date and Time: January 16, 2019 10:00 AM, Kyiv time (UTC +2:00)</i></b>
14	22	Allowable Manner of Submitting Bids	<input checked="" type="checkbox"/> Electronic submission of Bid for technical and financial offers
15	22	Bid Submission Address	<b><i>tenders.ua@undp.org</i></b>  <b><i>Please note that bids received through any other address will not be considered.</i></b>
16	22	Electronic submission (eTendering) requirements	<ul style="list-style-type: none"> <li>▪ Format: PDF, word, excel files only.</li> <li>▪ Max. file size per transmission: 5 MB</li> <li>▪ File names must be maximum 60 characters long and must <b>not contain any letter or special character other than from Latin alphabet/keyboard.</b></li> <li>▪ All files must be free of viruses and not corrupted. Bidders are solely responsible for ensuring that any and all files sent to UNDP are readable, that is, uncorrupted, in the indicated electronic format, and free from viruses and malware. Failure to provide readable files will result in the bid being rejected.</li> </ul> <p><b><i>PLEASE make all efforts to provide your proposal in 1 archived PDF file not exceeding 5 MB size.</i></b></p> <p><b><i>Bidders are solely responsible for ensuring that any and all files sent to UNDP are readable, that is, uncorrupted, in the indicated electronic format, and free from viruses and malware. Failure to provide readable files will result in the Bid being rejected.</i></b></p> <p><b><i>Please take into consideration the fact that emails are delivered within 5-10 mins, therefore avoid last minute submission, which might lead to late submission.</i></b></p>
17	25	Date, time and venue for the opening of bid	<p>UNDP will present bids received on email <b>tenders.ua@undp.org</b> in the presence of Bidders' Representatives <b>who have submitted a bid</b> and choose to attend, at the time, on the date, and at the place specified below.</p> <p>Date and Time: January 16, 2019 3:00 PM</p>

			<p>Venue: Lviv meeting room; UN Office in Ukraine; 1 Klovskyi descent, Kyiv (GMT+2) / Skype conference</p> <p>Companies may participate at the Bid Opening conference through skype conference. Interested companies should send confirmations by below email.</p> <p>Any bidder that intends to participate in the public bid opening shall notify UNDP by address <a href="mailto:health.procurement.ua@undp.org">health.procurement.ua@undp.org</a> at least 24 hours in advance.</p>
18	27, 36	Evaluation Method for the Award of Contract	<p>Lowest priced technically responsive, eligible and qualified bid.</p> <p>UNDP intends to enter into a Long-Term Agreement/s (LTA) with the selected supplier/s as a result of this ITB for an initial period of 12 months, with the possibility for extension for additional 12 months, subject for satisfactory performance.</p>
19		Expected date for commencement of Contract	<i>February 16, 2019</i>
20		Maximum expected duration of contract	As per Section 4
21	36	UNDP will award the contract to:	<p>One or more Proposers, depending on the following factors : Lowest price offer of technically qualified/responsive Bid per lot</p> <p>UNDP may establish Long Term Agreements (LTAs) with the lowest-priced qualified and eligible manufacturers, as detailed in Sections 4 and 5 of this ITB.</p>
22	40	Type of Contract	<p>Purchase Order/Long Term agreement</p> <p><a href="http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html">http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html</a></p>
23	40	UNDP Contract Terms and Conditions that will apply	<p>UNDP General Terms and Conditions for Contracts</p> <p><a href="http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html">http://www.undp.org/content/undp/en/home/procurement/business/how-we-buy.html</a></p>
24		Other Information Related to the ITB	<p>Post Qualification Actions:</p> <ul style="list-style-type: none"> <li>- Verification of accuracy, correctness and authenticity of the information provided by the bidder on the legal, technical and financial documents submitted;</li> <li>- Validation of extent of compliance to the ITB requirements and evaluation criteria based on what has so far been found by the evaluation team;</li> <li>- Inquiry and reference checking with Government entities</li> </ul>

			<p>with jurisdiction on the bidder, or any other entity that may have done business with the bidder;</p> <ul style="list-style-type: none"> <li>- Inquiry and reference checking with other previous clients on the quality of performance on ongoing or previous contracts completed;</li> <li>- Physical inspection of the bidder's plant, factory, branches or other places where business transpires, with or without notice to the bidder;</li> <li>- Sampling and Testing of delivered goods, where available.</li> </ul>
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## Section 4. Schedule of Requirements and Technical Specifications

### 1. EXECUTIVE SUMMARY

In April 2015, the Ministry of Health of Ukraine approached the UN System in Ukraine to support the procurement and distribution of medicines and other medical products in scope of health state programs as an emergency measure. This new approach to procurement in the public health sector was aimed to prevent corruption and protect the rights of patients in Ukraine to access affordable and quality medicines.

In 2015, UNDP supported the MOH with the procurement and distribution of medicines and other medical products for 8 state health programmes. UNDP support to the Ministry of Health was extended to 23 programmes in 2016.

On July 2017, UNDP signed new agreement with the MoH to procure essential medicines and medical products for 15 health programmes under 2017 State budget. Later in 2017, the MOH allocated 11 more programs to UNDP for procurement of vitally needed health products.

In 2018 UNDP signed agreement with the MoH to procure essential medicines and medical products for 27 health programmes under 2018 State budget.

UNDP operates on a collaborative spectrum leveraging the technical competence to deliver against four strategic objectives:

- selection of reliable suppliers of quality-assured products;
- procurement of the most cost-effective pharmaceutical products in the right quantities;
- timely delivery; and
- achievement of the lowest possible total cost.

This specific tender focuses on the supply of medicines for adult patients with oncological and oncohematological diseases, pediatric patients with oncological and oncohematological diseases in accordance with the value-for-money principle for the Ukrainian State budgets of 2017 and 2018 years as well as any requirements sought on behalf of Governments in the implementation of national programmes.

### 2. LONG-TERM AGREEMENT ARRANGMENTS

The objective of this procurement is to source medicines in the quantities outlined in the paragraph 3 of this Section to cover the needs of Country Office Ukraine and to establish non-exclusive Long-Term Agreements (LTAs) with lowest priced manufacturers for the procurement of the required medicines.

The initial agreement/s shall be concluded for a period of 1 (one) year and may be extended for additional 1 (one) year, subject for satisfactory performance of the supplier/s.

UNDP plans to place Purchase Orders for the quantities mentioned below (indicated in the Chapter "Products Specification"). The future volumes are expected to remain in the same ranges, however UNDP does not guarantee placement of Purchase Orders for any quantities.

Bidders are requested to stipulate in Price Schedule Form prices on FCA and DAP Incoterms for quantities outlined in paragraph 3 of this Section where FCA and DAP prices will serve as ceiling price to be specified in the LTA as well as percentage discount that will be made available to UNDP based on cumulative contracted value over the duration of the resulting LTAs. Volume discount mechanism is outlined in Price Schedule Form. Applicable cumulative volume percentage discounts will influence UNDP decision to sign LTA with the selected company/ies. Ceiling prices specified in the LTA shall remain firm and not be increased.

UNDP shall receive the best price and best conditions available throughout the LTA validity, i.e. prices and conditions to UNDP shall be at least equal to the best prices and conditions available to any UN Organization or other client.

### 3. PRODUCTS SPECIFICATION\*:

Lot #	International non-proprietary name	Pharmaceutical presentation	Strength	Quantity	Delivery Destination
1	Posaconazole	ampules/vial/syringes	40 mg/ml, 105 ml	2 761	Ukraine
2	Capecitabine	tablets, capsules, pills	150 mg	268 256	Ukraine
3	Capecitabine	tablets, capsules, pills	500 mg	1 380 464	Ukraine

\* Quantities which are expected to be procured by UNDP with the first order/s.

**NB.** UNDP reserves the right to vary the quantity of the goods by up to a maximum twenty-five per cent (25%) of the total offer, without any change in the unit price or other terms and conditions.

### 4. PRODUCT STANDARDS

These standards below are specific for this procurement action and in no way constitute an obligation from UNDP to use any of these standards in future procurement actions.

UNDP will procure the medicines that comply with UNDP QA policy. In the context of this particular tender, products should be :

#### OPTION 1 [A+E]:

A) **Approved/registered by a Stringent National Medicines Regulatory Authority (SRA)\* as defined by WHO.** Stringent Drug Regulatory Authority (SRA) means a regulatory authority:

- (a) a member of ICH prior to 23 October 2015, namely: the US Food and Drug Administration, the European Commission (in case of the European Union both European Medical Agency (EMA) and European Union member States) and the Ministry of Health, Labour and Welfare of Japan also represented by the Pharmaceuticals and Medical Devices Agency; or
- (b) an ICH observer prior to 23 October 2015, namely: the European Free Trade Association, as represented by Swissmedic and Health Canada; or
- (c) a regulatory authority associated with an ICH member through a legally-binding, mutual recognition agreement prior to 23 October 2015, namely: Australia, Iceland, Liechtenstein and Norway.

**\*) In case product is registered by SRA authorities for “export only” (i.e. registered but not marketed on the country of SRA authority), UNDP will conduct additional verification of product’s compliance to the products standards.**

AND

- E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities\*\*

**\*\*) The selected Suppliers are requested to manufacture products only at manufacturing sites/units/blocks, which are certified by WHO (WHOPIR) or PIC/S GMP.**

**OPTION 2 [B+E]:**

- B) Registered in Ukraine and at least one successfully completed supply of the product in the similar volume in/to Ukraine within the past five years (since December 2013).

AND

- E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities\*\*

**\*\*) The selected Suppliers are requested to manufacture products only at manufacturing sites/units/blocks, which are certified by WHO (WHOPIR) or PIC/S GMP.**

**OPTION 3 [C+E]:**

- C) Prequalified by World Health Organization

AND

- E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities\*\*

**\*\*) The selected Suppliers are requested to manufacture products only at manufacturing sites/units/blocks, which are certified by WHO (WHOPIR) or PIC/S GMP.**

**OPTION 4 [D+E]:**

D) Recommended by the WHO Expert Review Panel for the Global Fund (also known as Global Fund ERP)

AND

E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities\*\*

**\*\*)** The selected Suppliers are requested to manufacture products only at manufacturing sites/units/blocks, which are certified by WHO (WHOPIR) or PIC/S GMP.

**NB: GMP certificates and/or WHOPIRs should be provided for all manufacturing sites where product is being produced (incl. manufacturing, packaging, batch release and quality control activities.**

#### **SPECIAL CONDITIONS TO THE MEDICINES:**

##### **Only for lot #1:**

The medicine's instruction must have not strict contraindications for the use in pediatric patients. In case instruction contains such contraindications, UNDP will conduct additional verification of clinical effectiveness and safety of usage for pediatric patients with oncological diseases. UNDP reserves the right to require a copy of a Public Assessment Report and/or a copy of the monograph in a National Formulary in the country of registration and/or other evidences of the use of medicine/s in the treatment of pediatric patients.

#### **5. IN-COUNTRY REGISTRATION REQUIREMENTS**

UNDP will evaluate offers for both registered and non-registered medicines. Non-registered medicines must meet quality standards as per paragraph 4.

By the time of supply, the products must be fully registered with the Ministry of Health confirming their legal use in Ukraine.

Successful Bidders whose product(s) is registered with MOH at time of award will be issued a contract.

Successful Bidder whose product(s) complies with quality standards, but is not registered with MOH at time of award, will sign a conditional contract and will be required to register their products before supply.

Bidders offering non-registered products that are compliant with quality standards, must start the registration process with MOH preferably before, but not later than 5 days after, signing a conditional contract for the supply of product(s). Failure to obtain registration and submit the required documents to UNDP will serve, at no claim to UNDP, as a ground for contract termination, liquidating Bid or Performance Security amount and either awarding the next qualified Bidder or initiating a new bidding process. The decision to transfer the award or initiate a new ITB will be at the discretion of UNDP.

Summary on the simplified procedure of state registration of medicinal products procured with involvement of



the international organizations provided for reference in the Annex 1 to this Section.

## 6. DELIVERY TIMEFRAMES

Early delivery of medicines to Ukraine is critical therefore we encourage shortest delivery periods. 100% quantities must be delivered within 4 months at the latest after Purchase Order dispatching. The bids with later delivery dates will be disqualified. Selected Bidder is obliged to sign Purchase Order/s within 2 weeks after receipt of Purchase Order/s electronically authorized by UNDP. The bids with later delivery dates will be disqualified.

Further to the Schedule of Requirements in the preceding Table, Bidders are requested to take note of the following additional requirements, conditions, and related services pertaining to the fulfillment of the requirements:

Delivery Term [INCOTERMS 2010] <i>(Pls. link this to price schedule)</i>	DAP Kyiv, Central Warehouse of the MoH, including customs terminal charges and storage.  The products shall be supplied to the Central Warehouse (State Enterprise) of MoH or designated by them entity appointed by UNDP. Exact location of the warehouse will be notified at the time of contracting. The transfer of ownership right from seller to buyer occurs simultaneously with the transfer of risk of goods loss or damage at the moment when the goods are delivered to the named warehouse. Partial delivery is acceptable: <u>maximum 3 consignments under delivery of one Lot/Item.</u>	
Mode of Transport Preferred	<input checked="" type="checkbox"/> AIR	<input checked="" type="checkbox"/> LAND
	<input checked="" type="checkbox"/> SEA	<input type="checkbox"/> OTHER <i>[pls. specify]</i>
Shipping documents	<ul style="list-style-type: none"> <li>• Commercial invoice – 2 originals;</li> <li>• Packing list – 1 copy;</li> <li>• Manufacturer's Certificate of Analysis – one either original or copy certified with the stamp of the Supplier – for each batch of products;</li> <li>• Batch release certificate - one either original or copy certified with the stamp of the Supplier – for each batch of products;</li> <li>• Certificate of origin – 1 original;</li> <li>• Certificate of the product's registration in Ukraine – copy;</li> <li>• Sample of packing &amp; labeling – copy: photo or artwork;</li> <li>• Ukrainian translation of the Product Information Leaflet (in case if products are supplied in original packing).</li> </ul>	
Customs, if needed, clearing shall be done by:	Central Warehouse (State Enterprise) of MoH appointed by UNDP will act as importer of record with the condition that goods are <u>shipped to</u> the aforesaid State Enterprise.	

Pre-shipment inspection	A pre-shipment inspection may be carried out by UNDP or its representative for verification of quality, quantity, packing, labelling, marking and sampling. In cases when pre-shipment inspection is required, the corresponding Purchase Order will specify this condition.
Inspection upon delivery	MoH/UNDP will conduct inspection upon delivery. Quality Control may be required upon discretion of UNDP/MoH.
Payment Terms	Within 30 calendar days after delivery subject to written acceptance of goods delivery, duly signed and stamped by UNDP/MoH and provision of original invoice. In case testing is required, satisfactory testing results is a prerequisite for payment release. Progress payments could be provided in case of partial delivery.

## 7. SHELF LIFE REQUIREMENTS

Products must have a minimum of 75% of the total product shelf life or should have 15 months' shelf life remaining at the time of delivery and must bear the dates of manufacture and expiry. Shelf life shall be indicated for all products quoted in the offer submitted.

## 8. PACKAGING, LABELLING, PUBLIC INFORMATION LEAFLETS (PILs)

1) Pharmaceuticals shall be transported and stored in accordance with the temperature mode specified in the product instruction. All temperature restricted commodities must be shipped with clear marking the corresponding temperature conditions. It is the responsibility of the Bidder to provide complete packing as required for transportation. Bidders shall explain their capabilities and experience to handle temperature control items where applicable.

2) The individual packages shall be packed in carton boxes. Each carton shall contain only one product and one batch. Packing must be sufficiently strong to withstand rough handling and exposure to extreme temperatures and air moisture. All temperature restricted commodities shall be shipped with a minimum number of data loggers as specified below.

Minimum requirements for dataloggers / for PURCHASE ORDERS:

Shipments of temperature sensitive health products should be accompanied by dataloggers. The number of dataloggers should be 1 if shipment has 5 or less boxes, 2 per each 5 boxes if shipment has more than 5 boxes. If products are shipped in containers, each container should have 2 dataloggers. Dataloggers should be activated, set up with adequate alarm levels and placed inside a box with the products. The boxes with dataloggers should be clearly identified with bright colour stickers (ideally orange).

The minimum technical requirements for dataloggers are as follows:

- Measures temperature (from -30° to +45°C, with accuracy +/- 0.5°C).
- Readings to include time and date
- Single or multiple use
- Direct USB interface, without need for additional cable
- Automatically creates PDF report when connected to computer.
- Rapid data download to graph
- Alarm levels set up before shipping according to manufacturer's storage requirements
- LCD featuring up to 1 decimal point readings
- Alarm indication on LCD screen
- Sampling rate: at least 1 measure per hour
- Push button to activate and stop logging.
- Easy to understand user's guide & instructions

All cases should be marked with/prominently indicate the following:

- A. Shipping marks;
- B. The generic name of the product;
- C. The dosage form (tablet, ampoule, syrup);
- D. Strength/ concentration of the product;
- E. Number of registration certificate
- F. Date of manufacture and expiry (in clear language not code);
- G. Batch number;
- H. Quantity per case;
- I. Special instructions for storage;
- J. Name of manufacturer;
- K. Carton numbering e.g. carton 1/40;
- L. Any additional cautionary statements.

3) Labelling of primary package now of supply must correspond to the specification approved by UNDP. In case of any deviations found, the Contractor must provide additional documentation to enable receipt of goods.

4) Primary packaging must preserve quality, safety and stability of the product it contains. The entire package must be duly sealed and protected from spoiling. Each package shall contain instructions for the use of the medicine in the language of country of destination or the original language.

In case medicines are delivered in original packaging with instructions for the use in the original language, translation of instruction for the use into the language of country of destination shall be provided in the electronic format at the time of supply.

The information mentioned on the secondary packaging should be coherent with the information printed on the primary packaging and shall at least provide the following information:

- The International Non-Proprietary Name (INN) of the product;

- The concentration for each Active Pharmaceutical Ingredient (API);
- The statement of the net content (number of units, weight or volume);
- The batch number;
- The expiry date in an uncoded form;
- Any special storage conditions or handling precautions that may be necessary;
- Directions for use, warning and precautions that may be necessary;
- The name and address of the manufacturer or the company responsible for placing the product on the market;
- The marketing license number.

5) The Patients Information Leaflet (PIL) should at least contain the following information:

- Product name in INN format;
- Uses;
- Instructions for use;
- Precautions;
- Common side effects;
- Contra-indications;
- Storage conditions.

The information included in the PIL should be coherent with the product information approved by the WHO PQ or SRA or the ERP or registration in Ukraine.

## **9. PRE-SHIPMENT INSPECTION**

When all the goods from a specific purchase order are ready for shipment with their final packing and marking, a pre-shipment inspection may be carried out by UNDP or its representative for verification of quality, quantity, packing, labelling, marking and sampling.

In cases when pre-shipment inspection is required, the corresponding Purchase Order will indicate this.

For this purpose, the Contractor will have to submit the applicable documentation to UNDP or its representative and allow UNDP or its representative access to all the goods. At least the packing list showing also the batch numbers per product and the full address of inspection should be made available to UNDP or its representative 7 working days before the pre-shipment inspection is requested to be carried out. Inspection/testing by UNDP or its representative in no way relieves the Contractor from the performance of full contractual obligations to UNDP. The cost of the pre-shipment inspection will be borne by UNDP. However, it is the responsibility of the Contractor to assure that all facilities, to carry out a proper inspection are made available at their expense, and the goods for one shipment are presented at one location and on the date requested by UNDP or its representative. Furthermore, UNDP or its representative will charge the Contractor for the repeat, supplementary or abortive inspection visits necessitated by the fault of the Contractor. UNDP or its representatives may inspect the production premises and the process of the manufacture to make sure they meet Good Manufacturing Practices (GMP).

In case of the detection of a defective product either in the quality of a product or other defects such as packaging, the Contractor will be requested to replace the complete batch at its own cost within one (1) month. In the event of a dispute by the Contractor, a counter analysis will be carried out by an independent neutral laboratory agreed by both UNDP and the Contractor. If the counter analysis confirms the defect, the cost of such analysis will be borne by the Contractor as well as the replacement and disposal of the defective batch. In the event of the independent analysis confirming the quality of the product, UNDP will meet all costs for such analysis.

## **10. STIPULATIONS CONCERNING CONTRACTOR RESPONSIBILITY FOR QUALITY, PACKAGING AND WARRANTY**

1) UNDP shall have the right to make claims under the warranty after the Goods have been delivered to the final destination indicated in the Purchase Order. Upon receipt of a written notice from UNDP, the Contractor shall, with all reasonable speed, replace the defective Goods without cost to Purchaser at the final location. The Contractor will be required to remove, at his own risk and cost, the defective Goods once the replacement Goods have been delivered. UNDP will dispose the defective Goods on the Contractor's costs. UNDP is obliged to call the Contractor's representative to dispose the defective Goods, which will certify the fact of disposal of the defective Goods. The Contractor will reimburse UNDP for the cost of disposal of the defective Goods, provided the documentary evidence is provided and the Contractor's representative is present at the disposal of the defective Goods.

2) The Contractor's responsibility for labelling and quantities of goods for every Purchase Order extends to the point at which the goods are inspected by UNDP or its representative and, if required, a Clean Report of Findings (CRF) is issued by UNDP or its representative, upon delivery, for the specific PO. Where discrepancies are found by UNDP or its representative in labelling and/or quantities, these shall be rectified promptly by the Contractor at its own cost.

3) The Contractor is responsible for the intrinsic quality of the finished dosage form of each product and for the intrinsic quality of the primary packaging of the product, prior to and after the CRF is issued. The Contractor's responsibility will be according to the Incoterms 2010 standards specified in the PO.

## **11. STIPULATIONS CONCERNING RECALLS**

In the event any of the Goods are recalled either by the National Regulatory Authority (NRA) of the country of production, the NRA of the recipient country or the Manufacturer, after the CRF related to the PO(s) covering the same Goods is issued, the Contractor shall notify UNDP within fourteen (14) days, providing full details of the reason for the recall and replace affected goods within one (1) month, at its own cost, the items covered by the recall with Goods that fully meet the requirements of the Technical Specifications and original PO(s) against which they were supplied, and arrange for collection or destruction of any defective Goods. If the Contractor fails to fulfill its recall obligation promptly, UNDP will, at the Contractor's expense, carry out the recall.

## **12. QUALITY ASSURANCE**

1) Upon receipt of an incoming batch/s, UNDP follow a thorough quality verification procedure, which may include review of Certificates of Analysis (CoA) for each batch of finished product to be supplied, control

against specifications, sample testing in accordance with UNDP and/or national QC protocols, labelling and packaging, etc.

2) Prior to shipment or upon arrival at the destination, some batches of the product may be tested (randomly) to ensure that the products meet Quality Assurance according to agreed contractual standards and requirements. Such tests might include, using an independent laboratory as service provider and or in-house quality checks and any consignment or batch(es) of goods not meeting the above-mentioned standards would be rejected.

3) Upon request, the contractor shall provide detailed Finished Pharmaceutical Product release specifications and methods of analysis. Those FPP specifications might be shared with the QC laboratory in charge of the testing of samples.

In the event of a dispute by the Contractor, a counter QC testing will be carried out by an independent neutral laboratory agreed by both UNDP and the Contractor. If the counter analysis confirms the defect, the cost of such analysis will be borne by the Contractor as well as the replacement and disposal of the defective batch. In the event of the independent analysis confirming the quality of the product, UNDP will meet all costs for such analysis.

4) Information about relevant medicines stability studies must be available upon request.

### **13. SUPPLIER REPORTING**

LTA holders will be requested to provide UNDP with General Procurement Statistics Report on a semi-annual basis. The following information must be included in the report:

- Requesting UNDP Country Office
- RFQ received (date)
- Quotation issued (date)
- Quantity
- Unit price
- Total value
- Purchase Order number and date of receipt
- Purchase Order acknowledgment date
- Contractually agreed delivery date
- Status of order (complete, ongoing)
- Actual date of delivery (IFOT<sup>11</sup> delivery)

### **14. PERFORMANCE EVALUATION**

UNDP will monitor and measure the performance of the Contractor based on the following Key Performance Indicators (KPIs) assessed for each order and/or delivery by UNDP:

*KPI 1: Responsiveness to UNDP call-offs under the valid LTA – target is 90%*

Defined as percentage of acceptance of UNDP requests and firm orders and readiness to supply goods against the LTA.

*KPI 2: Timeliness of delivery - target is 90%.*

Defined as the timeline of actual delivery time of goods as per Estimated Time of Delivery (ETD) in line with terms quoted in the corresponding RFQ submission.

*KPI 3: Completeness of delivery – target is 100%.*

Defined as percentage of Purchase Orders issued to a given LTA holder for which actual delivery in full adheres to contractual terms.

*KPI 4: Communication and status updates - target is 100%.*

Define as the quality of communication, sufficiency of updates and proactive approach during the course of the order.

## Annex 1 BRIEF SUMMARY

### **1. On the simplified procedure of state registration of medicinal products procured with involvement of the international organizations**

The procedure of state registration (re-registration) of medicinal products was approved by the Cabinet of Ministers of Ukraine Resolution No. 376 of 26.05.2005.

State registration of the medicinal products procured by international organizations is provided by the Ministry of Health of Ukraine pursuant to an application and subject to an opinion of the MoH State Expert Centre (hereinafter referred to as the Centre) drawn up on the basis of results of the expert examination of the registration materials for their authenticity, conducted according to the procedure specified by the MoH of Ukraine.

Information on the procedures for state registration may be found under the below links:

1. Law of Ukraine "On Medicines"  
<http://zakon2.rada.gov.ua/laws/show/123/96-%D0%B2%D1%80>
2. Decree of the Cabinet of Ministers of Ukraine dated 26.05.2005 № 376  
<http://zakon5.rada.gov.ua/laws/show/376-2005-%D0%BF>
3. Decree of MOH of Ukraine dated 03.11.2015 № 721  
<http://zakon2.rada.gov.ua/laws/show/z1453-15>

### **2. On additional relevant information on VAT for bidders. This information is provided for references only and UNDP should not be hold accountable for any details. Bidders are encouraged to check the details with relevant authorities directly.**

Operations on supply (transfer) of pharmaceuticals and medical products shall be temporarily, until March 31, 2019, exempt from VAT, if importation and/or supply is done under contracts with specialized procurement organizations listed in the Law of Ukraine 'On Public Procurement', concluded with the objective of implementing agreements between the central executive body of Ukraine in charge of developing and implementing the national health policy and a relevant specialized procurement organization within the framework of budget programmes for implementation of public health action plans and/or comprehensive programme activities in the health sector.

Provided VAT exemption condition may not be applied under the Ukrainian legislation. VAT amount should be clearly indicated in a separate line (if applicable).

For more information on VAT exemption, please refer to the following legislation documents:

1. Tax Code of Ukraine, Chapter #XX Transitional Provisions, Section #2; Paragraph #38 on conditions of temporary VAT exemption of medicines that are procured by specialized organizations for the National Public Health Programme to the Ministry of Health (MoH) in Ukraine:  
<http://zakon2.rada.gov.ua/laws/show/2755-17/page45>
2. Decree of the Cabinet of Ministers of Ukraine #1153 dated 02.12.2015 on the procedures of importation, supply and targeted use of medicines, medical devices that are VAT exempted:  
<http://zakon3.rada.gov.ua/laws/show/1153-2015-%D0%BF>

***Prices specified shall remain firm and not be increased. In case Bidder increases price after awarding contract, UNDP will consider this as a ground for contract termination, liquidating Bid or Performance Security amount and either awarding the next qualified Bidder or initiating a new bidding process***



## Section 5.

### Returnable Bidding Forms / Checklist and Evaluation Criteria

This form serves as a checklist for preparation of your Bid. Please complete the Returnable Bidding Forms in accordance with the instructions in the forms and return them as part of your Bid submission. No alteration to format of forms shall be permitted and no substitution shall be accepted.

Before submitting your Bid, please ensure compliance with the Bid Submission instructions of the BDS 22.

#### Technical Bid:

<b>Have you duly completed all the Returnable Bidding Forms?</b>	
▪ Form A: Bid Submission Form	<input type="checkbox"/>
▪ Form B: Bidder Information Form	<input type="checkbox"/>
▪ Form C: Joint Venture/Consortium/ Association Information Form	<input type="checkbox"/>
▪ Form D: Qualification Form	<input type="checkbox"/>
▪ Form E: Technical Bid Form	<input type="checkbox"/>
<b>Have you provided the required documents to establish compliance with the evaluation criteria in Section 5 (provided below)?</b>	<input type="checkbox"/>

#### Price Schedule:

▪ Form F: Price Schedule Form	<input type="checkbox"/>
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### Evaluation Criteria and Required Documents

#### Preliminary Examination Criteria

Bids will be examined to determine whether they are complete and submitted in accordance with ITB requirements as per below criteria on a Yes/No basis:

- Appropriate signatures
- Power of Attorney
- Minimum Bid documents provided
- Bid Validity

#### Minimum Eligibility and Qualification Criteria to Bidder

Eligibility and Qualification will be evaluated on a Pass/Fail basis.

If the Bid is submitted as a Joint Venture/Consortium/Association, each member should meet the minimum criteria, unless otherwise specified.

Subject	Criteria	Document Submission requirement
<b>ELIGIBILITY</b>		
<b>Legal Status</b>	Vendor is a legally registered entity.	Form B: Bidder

		Information Form
<b>Eligibility</b>	Vendor is not suspended, nor debarred, nor otherwise identified as ineligible by any UN Organization or the World Bank Group or any other international Organization in accordance with ITB clause 3.	Form A: Bid Submission Form
<b>Conflict of Interest</b>	No conflicts of interest in accordance with ITB clause 4.	Form A: Bid Submission Form
<b>Bankruptcy</b>	Has not declared bankruptcy, is not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against the vendor that could impair its operations in the foreseeable future.	Form A: Bid Submission Form
<b>Certificates and Licenses</b>	<ul style="list-style-type: none"> <li>▪ Duly authorized to act as Agent on behalf of the Manufacturer, or Power of Attorney, if bidder is not a manufacturer</li> </ul>	Form B: Bidder Information Form
<b>QUALIFICATION</b>		
<b>History of Non-Performing Contracts<sup>1</sup></b>	Non-performance of a contract did not occur as a result of contractor default for the last 3 years.	Form D: Qualification Form
<b>Litigation History</b>	No consistent history of court/arbitral award decisions against the Bidder for the last 3 years.	Form D: Qualification Form
<b>Previous Experience</b>	Minimum 3 years of relevant experience.	Form D: Qualification Form
	Minimum 2 contracts of similar value, nature and complexity implemented over the last 3 years. <i>(For JV/Consortium/Association, all Parties cumulatively should meet requirement).</i>	Form D: Qualification Form
<b>Financial Standing</b>	Minimum average annual turnover over the past 2 years shall equal to no less than USD 1.5 million. <i>(For JV/Consortium/Association, all Parties cumulatively should meet requirement).</i>	Form D: Qualification Form
	Bidder must demonstrate the current soundness of its financial standing and indicate its prospective long-term profitability. <i>(For JV/Consortium/Association, all Parties cumulatively should meet requirement).</i>	Form D: Qualification Form

### Minimum Quality Assurance Criteria to the Products

<sup>1</sup> Non-performance, as decided by UNDP, shall include all contracts where (a) non-performance was not challenged by the contractor, including through referral to the dispute resolution mechanism under the respective contract, and (b) contracts that were so challenged but fully settled against the contractor. Non-performance shall not include contracts where Employers decision was overruled by the dispute resolution mechanism. Non-performance must be based on all information on fully settled disputes or litigation, i.e. dispute or litigation that has been resolved in accordance with the dispute resolution mechanism under the respective contract and where all appeal instances available to the Bidder have been exhausted.

Criteria	Required Document	Yes	Reference
<b>OPTION 1: A+E</b> A) Approved/registered by a Stringent National Medicines Regulatory Authority (SRA) as defined by WHO AND E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities.	A) A copy of valid Registration/Approval of Stringent National Medicines Regulatory Authority (SRA) as defined by WHO	<input type="checkbox"/>	
<b>OPTION 2: B+E</b> B) Registered in Ukraine and at least one successfully completed supply of the product in the similar volume in/to Ukraine within the past five years (since December 2013) AND E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities.	B) Registration Certificate in Ukraine and evidence of at least one successfully completed supply of the product in the similar volume in/to Ukraine within the past five years (since December 2013)	<input type="checkbox"/>	
	C) WHO pre-qualification evidence Approval of the WHO Expert Review Panel for the Global Fund (also known as Global Fund ERP)	<input type="checkbox"/>	
	D) Approval of the WHO Expert Review Panel for the Global Fund (also known as Global Fund ERP)	<input type="checkbox"/>	
<b>OPTION 3: C+E</b> B) Prequalified by World Health Organization AND E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities.	E) A copy of valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities for the manufacturing site(s) of the proposed product(s).  Please provide information manufacturing site, including concrete manufacturing unit/block in the Form 7 Technical Bid Form.	<input type="checkbox"/>	
<b>OPTION 4: D+E</b> C) Recommended by the WHO Expert Review Panel for the Global Fund (also known as Global Fund ERP) AND E) The product is being manufactured at sites with valid WHO Public Inspection Report (WHOPIR) or GMP Certificate issued by PIC/S authorities.			
<b>Ukraine ONLY</b> Availability of valid registration in Ukraine at the time of supply as defined in Section 4, para #5, Registration/Authorization for use in Ukraine (if, at the moment of the bid submission, the quoted medicinal products are not registered in Ukraine but comply with the quality requirements of this ITB, a Commitment letter shall be provided)	Option A: A copy of a valid registration certificate for every medicinal product quoted issued by the Ministry of Health of Ukraine.  If a bid is submitted less than 90 days prior to the product's registration expiration date, a letter issued by MoH confirming the application and documents package for renewal by the owner must be provided at the time of the submission as part of the documents package	<input type="checkbox"/>	

Criteria	Required Document	Yes	Reference
	Option B: If, at the moment of the bid submission, the quoted medicinal product is not registered in Ukraine but comply with the quality requirements of this ITB, a Commitment letter (Annex 2) from the bidder acknowledging acceptance of the terms and conditions for undertaking a registration procedure and confirming the ability to comply with submitting the package of documents for state registration will be required.	<input type="checkbox"/>	
<b>Compliance with shelf life</b> , packing and labelling requirements (please refer for details to Section 4, para #7).	Information on shelf life in the Annex 3 to Technical Bid Form E	<input type="checkbox"/>	
<b>Acceptability of the Transportation/Delivery Schedule</b> (please refer for details Section 4, para #6)	Please provide Information on delivery schedule in the Annex 3 to Technical Bid Form E	<input type="checkbox"/>	

List of other documents required for evaluation of the product	Yes	Reference
Instruction for the medical use	<input type="checkbox"/>	
Evidence of formal and explicit indication for the use in pediatric patients. Evidence of indication for the use in child patients shall be provided by the Bidder (only for lot #1)	<input type="checkbox"/>	
A copy of the Certificate of Pharmaceutical Product (COPP) from the national regulatory body in the country of manufacture for each product shall be provided. If available WHO type COPPs for products being imported into the countries within WHO certification Scheme are requested to be provided.	<input type="checkbox"/>	
The Bidder which applies with the patented product shall inform UNDP and provide respective patent certificate/s. The Bidder which have relevant license/s (e.g., voluntary license/s) shall provide them.  Every patent case will be assessed by UNDP separately and decision will be made upon additional verification and analysis of existing patent/s and local IP legislation in the country of destination.	<input type="checkbox"/>	

Annex 2

**Commitment letter**

***(This should be written in the Letterhead of the Bidder. Except for indicated fields, no changes may be made in this template.)***

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To: [insert: Name and Address of UNDP focal point]

Dear Sir/Madam:

We, the undersigned, hereby offer to supply the goods required for [insert: title of goods and services required as per ITB] in accordance with your Invitation to Bid dated [Insert ITB Reference Number].

We hereby commit to register the below listed products with Ukrainian registration authorities as the current legislation requires.

Products:

1. \_\_\_\_\_
2. \_\_\_\_\_
3. ....

We fully understand and recognize that UNDP is not bound to accept this Bid, that we shall bear all costs associated with its preparation and submission, registration fees and that UNDP will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the evaluation.

We remain,  
Yours sincerely,

Authorized Signature [In full and initials]: \_\_\_\_\_

Name and Title of Signatory: \_\_\_\_\_

Name of Firm: \_\_\_\_\_

***[Stamp with official stamp of the Bidder]***

**FORM A: BID SUBMISSION FORM**

Name of Bidder:	[Insert Name of Bidder]	Date:	
ITB reference:	[Insert ITB Reference Number]		

We, the undersigned, offer to supply the goods and related services required for [Insert Title of goods and services] in accordance with your Invitation to Bid No. [Insert ITB Reference Number] and our Bid. We hereby submit our Bid, which includes this Technical Bid and Price Schedule.

Our attached Price Schedule is for the sum of [Insert amount in words and figures and indicate currency].

We hereby declare that our firm, its affiliates or subsidiaries or employees, including any JV/Consortium /Association members or subcontractors or suppliers for any part of the contract:

- a) is not under procurement prohibition by the United Nations, including but not limited to prohibitions derived from the Compendium of United Nations Security Council Sanctions Lists;
- b) have not been suspended, debarred, sanctioned or otherwise identified as ineligible by any UN Organization or the World Bank Group or any other international Organization;
- c) have no conflict of interest in accordance with Instruction to Bidders Clause 4;
- d) do not employ, or anticipate employing, any person(s) who is, or has been a UN staff member within the last year, if said UN staff member has or had prior professional dealings with our firm in his/her capacity as UN staff member within the last three years of service with the UN (in accordance with UN post-employment restrictions published in ST/SGB/2006/15);
- e) have not declared bankruptcy, are not involved in bankruptcy or receivership proceedings, and there is no judgment or pending legal action against them that could impair their operations in the foreseeable future;
- f) undertake not to engage in proscribed practices, including but not limited to corruption, fraud, coercion, collusion, obstruction, or any other unethical practice, with the UN or any other party, and to conduct business in a manner that averts any financial, operational, reputational or other undue risk to the UN and we embrace the principles of the United Nations Supplier Code of Conduct and adhere to the principles of the United Nations Global Compact.

We declare that all the information and statements made in this Bid are true and we accept that any misinterpretation or misrepresentation contained in this Bid may lead to our disqualification and/or sanctioning by the UNDP.

We offer to supply the goods and related services in conformity with the Bidding documents, including the UNDP General Conditions of Contract and in accordance with the Schedule of Requirements and Technical Specifications.

Our Bid shall be valid and remain binding upon us for the period specified in the Bid Data Sheet.

We understand and recognize that you are not bound to accept any Bid you receive.

I, the undersigned, certify that I am duly authorized by [Insert Name of Bidder] to sign this Bid and bind it should UNDP accept this Bid.

Name: \_\_\_\_\_  
 Title: \_\_\_\_\_  
 Date: \_\_\_\_\_  
 Signature: \_\_\_\_\_

*[Stamp with official stamp of the Bidder]*

## FORM B: BIDDER INFORMATION FORM

<b>Legal name of Bidder</b>	[Complete]
<b>Legal address</b>	[Complete]
<b>Year of registration</b>	[Complete]
<b>Bidder's Authorized Representative Information</b>	Name and Title: [Complete] Telephone numbers: [Complete] Email: [Complete]
<b>Are you a UNGM registered vendor?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No    If yes, [insert UGNM vendor number]
<b>Are you a UNDP vendor?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No    If yes, [insert UNDP vendor number]
<b>Countries of operation</b>	[Complete]
<b>No. of full-time employees</b>	[Complete]
<b>Quality Assurance Certification (e.g. ISO 9000 or Equivalent)</b> <i>(If yes, provide a Copy of the valid Certificate):</i>	[Complete]
<b>Does your Company hold any accreditation such as ISO 14001 or ISO 14064 or equivalent related to the environment?</b> <i>(If yes, provide a Copy of the valid Certificate):</i>	[Complete]
<b>Does your Company have a written Statement of its Environmental Policy?</b> <i>(If yes, provide a Copy)</i>	[Complete]
<b>Does your organization demonstrate significant commitment to sustainability through some other means, for example internal company policy documents on women empowerment, renewable energies or membership of trade institutions promoting such issues</b>	[Complete]
<b>Is your company a member of the UN Global Compact</b>	[Complete]
<b>Contact person that UNDP may contact for requests for clarifications during Bid evaluation</b>	Name and Title: [Complete] Telephone numbers: [Complete]

**Please attach the following documents:**

Email: [Complete]

- Company profile (maximum 5 pages) or link to company's web-site
- Certificate of Incorporation/ Business Registration
- Tax Registration/Payment Certificate issued by the Internal Revenue Authority evidencing that the Bidder is updated with its tax payment obligations, or Certificate of Tax exemption, if any such privilege is enjoyed by the Bidder
- Quality Certificate (e.g., ISO, etc.) and/or other similar certificates, accreditations, awards and citations received by the Bidder, if any
- Environmental Compliance Certificates, Accreditations, Markings/Labels, and other evidences of the Bidder's practices which contributes to the ecological sustainability and reduction of adverse environmental impact (e.g., use of non-toxic substances, recycled raw materials, energy-efficient equipment, reduced carbon emission, etc.), either in its business practices or in the goods it manufactures
- Valid Certificate of Authorization to act on behalf of the Manufacturer in case the Bidder is not Manufacturer
- List of Shareholders and Other Entities Financially Interested in the Firm owning 5% or more of the stocks and other interests, or its equivalent if Bidder is not a corporation



FORM C: JOINT VENTURE/CONSORTIUM/ASSOCIATION INFORMATION  
FORM (IF APPLICABLE)

Name of Bidder:	[Insert Name of Bidder]	Date:	
ITB reference:	[Insert ITB Reference Number]		

To be completed and returned with your Bid if the Bid is submitted as a Joint Venture/Consortium/Association.

No	Name of Partner and contact information (address, telephone numbers, fax numbers, e-mail address)	Proposed proportion of responsibilities (in %) and type of goods and/or services to be performed
1	[Complete]	[Complete]
2	[Complete]	[Complete]
3	[Complete]	[Complete]

<b>Name of leading partner</b> (with authority to bind the JV, Consortium, Association during the ITB process and, in the event a Contract is awarded, during contract execution)	[Complete]
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We have attached a copy of the below referenced document signed by every partner, which details the likely legal structure of and the confirmation of joint and severable liability of the members of the said joint venture:

☐ Letter of intent to form a joint venture      **OR**      ☐ JV/Consortium/Association agreement

We hereby confirm that if the contract is awarded, all parties of the Joint Venture/Consortium/Association shall be jointly and severally liable to UNDP for the fulfilment of the provisions of the Contract.

Name of partner: _____	Name of partner: _____
Signature: _____	Signature: _____
Date: _____	Date: _____
Name of partner: _____	Name of partner: _____
Signature: _____	Signature: _____
Date: _____	Date: _____

## FORM D: ELIGIBILITY AND QUALIFICATION FORM

Name of Bidder:	[Insert Name of Bidder]	Date:	
ITB reference:	[Insert ITB Reference Number]		

If JV/Consortium/Association, to be completed by each partner.

### History of Non- Performing Contracts

<input type="checkbox"/> Non-performing contracts did not occur during the last 3 years			
<input type="checkbox"/> Contract(s) not performed in the last 3 years			
Year	Non- performed portion of contract	Contract Identification	Total Contract Amount (current value in US\$)
		Name of Client: Address of Client: Reason(s) for non-performance:	

### Litigation History (including pending litigation)

<input type="checkbox"/> No litigation history for the last 3 years			
<input type="checkbox"/> Litigation History as indicated below			
Year of dispute	Amount in dispute (in US\$)	Contract Identification	Total Contract Amount (current value in US\$)
		Name of Client: Address of Client: Matter in dispute: Party who initiated the dispute: Status of dispute: Party awarded if resolved:	

### Previous Relevant Experience

Please list only previous similar assignments successfully completed in the last 2 years.

List only those assignments for which the Bidder was legally contracted or sub-contracted by the Client as a company or was one of the Consortium/JV partners. Assignments completed by the Bidder's individual experts working privately or through other firms cannot be claimed as the relevant experience of the Bidder, or that of the Bidder's partners or sub-consultants, but can be claimed by the Experts themselves in their CVs. The Bidder should be prepared to substantiate the claimed experience by presenting copies of relevant documents and references if so requested by UNDP.

Project name & Country of Assignment	Client & Reference Contact Details	Contract Value	Period of activity and status	Types of activities undertaken

Bidders may also attach their own Project Data Sheets with more details for assignments above.

☐ Attached are the Statements of Satisfactory Performance from the Top 3 (three) Clients or more.

## Financial Standing

<b>Annual Turnover for the last 3 years</b>	Year	USD
	Year	USD
	Year	USD
<b>Latest Credit Rating (if any), indicate the source</b>		

Financial information (in US\$ equivalent)	Historic information for the last 3 years		
	Year 1	Year 2	Year 3
	<i>Information from Balance Sheet</i>		
Total Assets (TA)			
Total Liabilities (TL)			
Current Assets (CA)			
Current Liabilities (CL)			
	<i>Information from Income Statement</i>		
Total / Gross Revenue (TR)			
Profits Before Taxes (PBT)			
Net Profit			
Current Ratio			

☐ Attached are copies of the audited financial statements (balance sheets, including all related notes, and income statements) for the years required above complying with the following condition:

- Must reflect the financial situation of the Bidder or party to a JV, and not sister or parent companies;
- Historic financial statements must be audited by a certified public accountant;
- Historic financial statements must correspond to accounting periods already completed and audited. No statements for partial periods shall be accepted.

## FORM E: TECHNICAL BID FORM

Name of Bidder:	[Insert Name of Bidder]	Date:	
ITB reference:	[Insert ITB Reference Number]		

The Bidder's Bid should be organized to follow this format of the Technical Bid. Where the bidder is presented with a requirement or asked to use a specific approach, the bidder must not only state its acceptance, but also describe how it intends to comply with the requirements. Where a descriptive response is requested, failure to provide the same will be viewed as non-responsive.

### SECTION 1: Bidder's qualification, capacity and expertise

- 1.1 General organizational capability which is likely to affect implementation: management structure, financial stability and project financing capacity, project management controls, extent to which any work would be subcontracted (if so, provide details).
- 1.2 Relevance of specialized knowledge and experience on similar engagements.
- 1.3 Quality assurance procedures and risk mitigation measures.
- 1.4 Organization's commitment to sustainability.

### SECTION 2: Scope of Supply, Technical Specifications, and Related Services

This section should demonstrate the Bidder's responsiveness to the specification by identifying the specific components proposed, addressing the requirements, as specified, point by point; providing a detailed description of the essential performance characteristics proposed; and demonstrating how the proposed bid meets or exceeds the requirements/specifications. All important aspects should be addressed in sufficient detail.

- 2.1 A detailed description of how the Bidder will deliver the required goods and services, keeping in mind the appropriateness to local conditions and project environment. Details how the different service elements shall be organized, controlled and delivered.

**2.1.1 Please provide filled-in Annex 3 in excel and PDF format (signed version).**

- 2.1.2 Please describe the Freight Forwarder details and Arrangements. Ability to provide/coordinate necessary shipping services, including air, sea and cold chain delivery (if required).

A supporting document with full details may be annexed to this section.

- 2.2 The bid shall also include details of the Bidder's internal technical and quality assurance review mechanisms.
- 2.3 Demonstrate how you plan to integrate sustainability measures in the execution of the contract.

### SECTION 3: Management Structure and Key Personnel

- 3.1 Describe the overall management approach toward plan
- 3.2 Ning and implementing the project. Include an organization chart for the management of the project describing the relationship of key positions and designations. Provide a spreadsheet to show the activities of each personnel and the time allocated for his/her involvement.
- 3.3 Staff Time Allocation: Provide a spreadsheet will be included to show the activities of each personnel involved in the implementation of the contract. Where the expertise of the personnel is critical to the success of the contract, UNDP will not allow substitution of personnel whose qualifications had been reviewed and accepted during the bid evaluation. (If substitution of such a personnel is unavoidable, substitution or replacement will be subject to the approval of UNDP. No increase in costs will be considered as a result of any substitution).
- 3.4 Provide CVs for key personnel that will be provided to support the implementation of this project using the format below. CVs should demonstrate qualifications in areas relevant to the scope of goods and/or services.

### Format for CV of Proposed Key Personnel

<b>Name of Personnel</b>	[Insert]
<b>Position for this assignment</b>	[Insert]
<b>Nationality</b>	[Insert]
<b>Language proficiency</b>	[Insert]
<b>Education/ Qualifications</b>	<i>[Summarize college/university and other specialized education of personnel member, giving names of schools, dates attended, and degrees/qualifications obtained.]</i> [Insert]
<b>Professional certifications</b>	<i>[Provide details of professional certifications relevant to the scope of goods and/or services]</i> <ul style="list-style-type: none"> <li>▪ Name of institution: [Insert]</li> <li>▪ Date of certification: [Insert]</li> </ul>
<b>Employment Record/ Experience</b>	<i>[List all positions held by personnel (starting with present position, list in reverse order), giving dates, names of employing organization, title of position held and location of employment. For experience in last five years, detail the type of activities performed, degree of responsibilities, location of assignments and any other information or professional experience considered pertinent for this assignment.]</i> [Insert]
<b>References</b>	<i>[Provide names, addresses, phone and email contact information for two (2) references]</i> Reference 1: [Insert] Reference 2: [Insert]

I, the undersigned, certify that to the best of my knowledge and belief, the data provided above correctly describes my qualifications, my experiences, and other relevant information about myself.

\_\_\_\_\_  
Signature of Personnel

\_\_\_\_\_  
Date (Day/Month/Year)

FORM F: PRICE SCHEDULE FORM

Name of Bidder:	[Insert Name of Bidder]	Date:	
ITB reference:	[Insert ITB Reference Number]		

The Bidder is required to prepare the Price Schedule as indicated in the Instruction to Bidders.

Please refer to Annex 4 (excel sheet) with the Price Schedule Form. Annex 4 shall be provided both in Excel and PDF format (signed version).

Section 6. Form for Performance Security

***(This must be finalized using the official letterhead of the Issuing Bank. Except for indicated fields, no changes may be made in this template.)***

To: UNDP  
*[Insert contact information as provided in Data Sheet]*

WHEREAS *[name and address of Contractor]* (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No. .... dated ....., to deliver the goods and execute related services ..... (hereinafter called "the Contract"):

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

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

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

This guarantee shall be valid until a date 30 days from the date of issue by UNDP of a certificate of satisfactory performance and full completion of services by the Contractor.

**SIGNATURE AND SEAL OF THE GUARANTOR BANK**

Date .....  
Name of Bank .....  
Address .....

## Section 7. Template of Purchase Order and General Terms and Conditions for Contracts

### PURCHASE ORDER TEMPLATE

***PO Text may vary from order to order and is not binding until issued, accepted and executed by all Parties. The provisions below are to be understood as typical information that UNDP may include.***



#### Ukraine

UNDP Office in Ukraine  
1 Klovsky Uzviz Str  
Kyiv 30 01021  
Ukraine  
Tel:  
Fax:

Vendor: 00000

#### Purchase Order

Dispatch via Print

PO Number UKR10-00000:	Date	Revision	Dispatch via Email Page 1
Payment Terms Immediate	Freight / INCOTERMS DAP	Ship Via Common	
Ruwer	Phone Tel: Fax:	Currency USD	
Approver			

**Ship To:** UNDP Office in Ukraine  
1 Klovsky Uzviz Str  
Kyiv 30 01021  
Ukraine

Tel:  
Fax:

**Bill To:** UNDP Office in Ukraine  
1 Klovsky Uzviz Str  
Kyiv 30 01021  
Ukraine

Tel:  
Fax:

Ln-Sch Item	Description	Quantity	UOM	Due Date	Unit Price	Line Total
-------------	-------------	----------	-----	----------	------------	------------

1-1

EJ

PO Text:

- Contractor: [please add]  
tel./fax : [please add]  
bank account [please add]  
Contact names: [please add]  
gsm: [please add]
- Purchaser: United Nations Development Programme

Contact names:

- Specifications and quantities of goods:
  - [Trade name, INN, pharmaceutical presentation, dosage]  
Pack size:  
Quantity of units/packs:  
Registration Certificate #\_\_\_\_: valid till  
Shelf life:  
Delivery terms: [to be added]  
QA reference:



4. Delivery terms and address:

5. Required shipping documents:

6. Pharmaceuticals shall be transported and stored in accordance with the temperature mode specified in the product instruction. All temperature restricted commodities must be shipped with clear marking of the corresponding temperature conditions. It is the responsibility of the Supplier to provide complete packing as required for transportation.

Shipments should be accompanied by dataloggers. The number of dataloggers should be 1 if shipment has 5 or less boxes, 2 if shipment has more than 5 boxes. If products are shipped in containers, each container should have 2 dataloggers. Dataloggers should be activated, set up with adequate alarm levels and placed inside a box with the products. The boxes with dataloggers should be clearly identified with bright color stickers (ideally orange).

The minimum technical requirements for dataloggers are as follows:

- Measures temperature (from -30° to 45°C, with accuracy +/- 0.5°C).
- Readings to include time and date
- Single or multiple use
- Direct USB interface, without need for additional cable
- Automatically creates PDF report when connected to computer.
- Rapid data download to graph
- Alarm levels set up before shipping according to manufacturer's storage requirements
- LCD featuring up to 1 decimal point readings
- Alarm indication on LCD screen
- Sampling rate: at least 1 measure per hour
- Push button to activate and stop logging.
- Easy to understand user's guide & instructions

7. Liquidated Damages terms: According to UNDP General Terms for Supply of Goods and Solicitation document ref. Invitation to Bid [to be added] the liquidated damages for delay shall be 0.5% of the price of the Contract per 1 (one) day of delay. Maximum number of days of delay – 30 (thirty) days, after which UNDP may terminate the contract.

8. UNDP shall have the right to make claims under the above warranty for three months after the Goods have been delivered to the final destination indicated in the Purchase Order. Upon receipt of a written notice from UNDP, the Supplier shall, with all reasonable speed, replace the defective Goods without cost to Purchaser at the final location.

The Supplier will be required to remove, at his own risk and cost, the defective Goods once the replacement Goods have been delivered. If the defective Goods are not removed within 30 days, UNDP will dispose on the Supplier's costs.

10. Payment terms: within 30 calendar days after delivery subject to written acceptance of goods duly signed and stamped by UNDP and MOH designated entity and provision of original invoice. In case testing is required, satisfactory testing results is a prerequisite for payment release.

11. Total amount of the present Purchas Order makes up [to be added]

12. The Supplier must comply with all provisions of the present Purchase Order (PO) and attachments mentioned below which are inalienable part of PO:

13.1. Long Term Agreement # [to be added] signed by both Parties. Not attached herein but acknowledged and in possession by both parties.

13.2. Solicitation document ref. ITB [to be added] dated [to be added] with specification. Not attached herein but acknowledged and in possession by both parties.

13.3. Supplier's bid dated [to be added]. Not attached herein but acknowledged and in possession by both parties.

13.4. UNDP General Terms and Conditions for Goods

## GENERAL TERMS AND CONDITIONS FOR GOODS

This Contract is between the United Nations Development Programme, a subsidiary organ of the United Nations established by the General Assembly of the United Nations (hereinafter "UNDP"), on the one hand, and a company or organization indicated in the Face Sheet of this Contract (hereinafter the "Contractor"), on the other hand.

### 1. LEGAL STATUS OF THE PARTIES:

UNDP and the Contractor shall be referred to as a "Party" or, collectively, "Parties" hereunder, and:

**1.1** Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, 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:

**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 also 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** To the extent that the Contract involves any purchase of the Goods, 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 supporting shipment documentation as may otherwise be specified in the Technical Specifications for Goods.

**2.3** 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.

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

### 3. LONG TERM AGREEMENT:

If the Contractor is engaged by UNDP on the basis of a long-term agreement ("LTA") 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 ordered during the term

of the LTA.

**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 the retainer and order Goods and/or Services from the Contractor hereunder.

**3.3** The Contractor shall provide the Services and/or deliver the Goods, as and when requested by UNDP and reflected in a Purchase Order, 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 for a period of three years from the Starting Date stated in the Face Sheet of this Contract.

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

**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 should be submitted to the UNDP Contact Person indicated in as indicated in the Face Sheet hereto, as well as to a UNDP business unit that has placed a Purchase Order for the Goods and/or Services during the reporting period.

**3.7** The LTA shall remain in force for the maximum period of two years and may be extended by UNDP for one additional year by mutual agreement of the Parties.

#### **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 a 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 the Services and/or 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** If an advance payment representing 20% or more of the total contract value, or amounting to US\$30,000 or more, is to be made by UNDP upon signature of the Contract by the Parties, such payment 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 by the Contractor to UNDP Contact Person. Upon request of the Contractor, and subject to approval by UNDP, invoices and financial reports may be submitted to UNDP by fax or email.

**6.2** All reports and invoices shall be submitted by the Contractor to the UNDP Contact Person specified in the Face Sheet of this 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** Where the Services are to be provided, in addition to an invoice, the Contractor shall submit to UNDP a report, describing in detail the Services provided under the Contract during the period of time covered in each report.

## **8. RESPONSIBILITY FOR EMPLOYEES:**

To the extent that the Contract involves the provision of the 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 obligations under the Contract 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** Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of UNDP, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

**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 obligations 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 obligations under the Contract; and,

8.4.3 in cases in which, pursuant to Article 8.4.1 or 8.4.2, above, 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 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 obligations under the Contract.

8.5.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

8.5.5 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.

8.5.6 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 8.3, 8.4 and 8.5, above, 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 any obligations 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 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 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** 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.

**8.10** 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.

**8.11** 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 above.

## **9. ASSIGNMENT:**

**9.1** Except as provided in Article 9.2, below, the Contractor may not assign, transfer, pledge or make any

other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of 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:**

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 UNDP approval, 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 the Goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to such purchases under the Contract:

**11.1 DELIVERY OF GOODS:** 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 to UNDP such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the Goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss,

damage to, or destruction of the Goods shall be borne exclusively by the Contractor until physical delivery of the Goods to UNDP in accordance with the terms of the Contract. Delivery of the Goods shall not be



deemed in itself as constituting acceptance of the Goods by UNDP.

**11.2 INSPECTION OF THE GOODS:** If the Contract provides that the Goods may be inspected prior to delivery, 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. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNDP or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

**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 take delivery of 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, manufacturer 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 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;

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, 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.

**11.8** In the event that UNDP elects to return any of the Goods for the reasons specified in Article 11.7, above, 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.

**11.9 TITLE:** The Contractor warrants and represents that the Goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the Goods shall pass from the Contractor to UNDP upon delivery of the Goods and their acceptance by UNDP in accordance with the requirements of the Contract.

**11.10 EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export license required with respect to the Goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to 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. INDEMNIFICATION:**

**12.1** The Contractor shall indemnify, defend, and 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:

12.1.1 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 terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or,

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

**12.2** The indemnity set forth in Article 12.1.1, above, shall not apply to:

12.2.1 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

12.2.2 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.

**12.3** In addition to the indemnity obligations set forth in this Article 12, the Contractor shall be obligated, at its sole expense, to defend UNDP and its officials, agents and employees, pursuant to this Article 12, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

**12.4** 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.

**12.5** In the event 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:

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

12.5.2 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,

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

### **13. INSURANCE AND LIABILITY:**

**13.1** The Contractor shall pay UNDP promptly for all loss, destruction, or damage to the property of UNDP caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

**13.2** Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

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

13.2.2 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;

13.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,

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

**13.3** The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

**13.4** 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.

**13.5** 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:

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

13.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNDP;

13.5.3 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; *and*,

13.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNDP.

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

**13.7** 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 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 13.5.3, above, the Contractor shall promptly notify UNDP concerning any cancellation or material change of insurance coverage required under the Contract.

**13.8** 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.

#### **14. ENCUMBRANCES AND LIENS:**

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

#### **15. EQUIPMENT FURNISHED BY UNDP TO THE CONTRACTOR:**

Title to any 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.

#### **16. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**

**16.1** 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 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.

**16.2** 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 license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.

**16.3** 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.

**16.4** 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 work under the Contract.

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

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with 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.

## **18. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:**

Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:

**18.1** The Recipient shall:

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

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

**18.2** Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 18, the Recipient may disclose Information to:

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

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

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

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

18.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in

accordance with the Charter of the United Nations.

**18.3** The Contractor may disclose Information *to the extent* required by law, *provided that*, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give 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.

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

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

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

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

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

**19.2** If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNDP shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 20, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNDP shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

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

## **20. TERMINATION:**

**20.1** Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) day's notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 23 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

**20.2** UNDP may terminate the Contract at any time 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.

**20.3** 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:

20.3.1 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;

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

20.3.3 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;

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

20.3.5 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;

20.3.6 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;

20.3.7 complete performance of the work not terminated; *and*,

20.3.8 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.

**20.4** 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.



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

20.5.1 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;

20.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

20.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

20.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

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

20.5.6 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.

**20.6** 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 20.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNDP of the occurrence of any of the events specified in Article 20.5, above, and shall provide UNDP with any information pertinent thereto.

**20.7** The provisions of this Article 20 are without prejudice to any other rights or remedies of UNDP under the Contract or otherwise.

## **21. NON-WAIVER OF RIGHTS: T**

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

## **22. NON-EXCLUSIVITY:**

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.

## **23. SETTLEMENT OF DISPUTES:**

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

**23.2 ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article

23.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL

Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

#### **24. 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.

#### **25. TAX EXEMPTION:**

**25.1** 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.

**25.2** 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.

#### **26. MODIFICATIONS:**

**26.1** No modification or change in this Contract shall be valid and enforceable against UNDP unless executed in writing by the duly authorized representatives of the Parties.

**26.2** If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 26.1, above.

**26.3** 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 26.1,

above.

## **27. AUDITS AND INVESTIGATIONS:**

**27.1** 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 of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

**27.2** 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 of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

**27.3** The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to 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 inspections, post-payment audits or investigations carried out by UNDP hereunder.

**27.4** 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 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.

## **28. LIMITATION ON ACTIONS:**

**28.1** Except with respect to any indemnification obligations in Article 12, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 23.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

**28.2** 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.

## **29. ESSENTIAL TERMS:**

The Contractor acknowledges and agrees that each of the provisions in Articles 30 to 36 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.

### **30. SOURCE OF INSTRUCTIONS:**

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.

### **31. STANDARDS OF CONDUCT:**

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. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract. In addition, in the performance of the Contract, the Contractor shall comply with the Standards of Conduct set forth 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" and ST/SGB/2006/15 of 26 December 2006 on "Post-employment restrictions", and shall also comply with and be subject to the requirements of the following documents then in force at the time of signature of the Contract:

**31.1** The UN Supplier Code of Conduct;

**31.2** UNDP Policy on Fraud and other Corrupt Practices ("UNDP Anti-fraud Policy");

**31.3** UNDP Office of Audit and Investigations (OAI) Investigation Guidelines;

**31.4** UNDP Social and Environmental Standards (SES), including the related Accountability Mechanism;

**31.5** UNDP Vendor Sanctions Policy; and

**31.6** All security directives issued by UNDP.

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](http://www.undp.org) or at <http://www.undp.org/content/undp/en/home/operations/procurement/business/>. 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 of this Contract.

### **32. OBSERVANCE OF THE LAW:**

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

### **33. CHILD LABOR:**

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

#### **34. MINES:**

The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

#### **35. SEXUAL EXPLOITATION:**

**35.1** In the performance of the Contract, the 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 Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

**35.2** The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

**35.3** UNDP shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

#### **36. ANTI-TERRORISM:**

The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNDP funds received under the Contract is used to provide support to individuals or entities associated with terrorism and that recipients of any amounts provided by UNDP hereunder do not appear on the list maintained by the Security Council Committee established pursuant to Resolution 1267 (1999). The list can be accessed via [https://www.un.org/sc/suborg/en/sanctions/1267/aq\\_sanctions\\_list](https://www.un.org/sc/suborg/en/sanctions/1267/aq_sanctions_list). This provision must be included in all sub-contracts or sub-agreements entered into under the Contract.