

Annex III

Special Conditions of Contract

A. Amendments to the General Conditions of Contract for Civil Works, attached as Annex 1(A) hereto

Clause 1 (setting forth definitions) on page 3 is hereby amended to read as follows:

(b) "Design and Build Contractor" or "Contractor" means the entity whose tender has been accepted and with whom the Contract has been entered into.

(c) "Project Manager" means the person whose services have been engaged by UNDP to administer the contract as provided therein, as will be notified by writing to the Contractor.

(e) "The Works" means the design, actual construction and supervision to be executed and completed under the contract.

Clause 1 (setting forth definitions) on page 3 is hereby supplemented with the following terms:

(i) Architect, Engineer and Quantity Surveyor: A duly licensed individual or entity designated by design and Build Contractor to perform or furnish specified Design Professional Services in connection with the Work.

(ii) Contract Documents: The documents as are listed under Agreement Declarations, Section 1 of the Agreement.

(iii) Contract Time: The time stated in the Agreement to achieve Substantial completion, and to finally complete the Works so that it is ready for final payment in accordance with article 46. of these General Conditions.

(iv) Design Criteria Package: The drawings and specifications and/or other graphic or written materials, criteria and information concerning the Employer's requirements for the Project, such as design objective and constraints, space, capacity and performance requirements, flexibility and expandability, which show or describe the character and scope of, or relate to, the Work to be performed or furnished and which have been prepared by or for the Employer.

(v) Laws and Regulations: Any and all applicable laws rules, regulations, ordinances, codes and orders or any and all governmental bodies, agencies, authorities and courts having jurisdiction.

(vi) Drawings: Those portions or the Contract Documents prepared by or for the Design and Builder Contractor and approved by Employer consisting of drawings, diagrams, illustrations, schedules and other data which show the scope, extent, and character of the work.

(vii) Specifications: Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the construction and certain administrative details applicable thereto.

(viii) Submittal: A written or graphic document prepared by or for Design and Build Contractor which is required by the Contract Documents to be submitted to the Employer by the Design and Build Contractor. Submittal may include, but are not necessarily limited to Drawings, Specifications, Bill of Quantities, Progress Schedules, Shop Drawings, Samples, Cash Flow Projections, and Schedules of Values. Submittals other than Drawings and Specifications are not Contract Documents.

(ix) Substantial Completion: The time at which the construction has progressed and the Work has been completed to the point where it sufficiently complete, in accordance with the Contract Documents, so that the Construction can be effectively and efficiently utilized for the purpose of which it is intended without any material impairment of function. The terms substantially Completion may be used in the

Contract Document in reference to a particular portion of the construction in which case the term will be applied as defined above only to that portion of the Construction; otherwise it shall be deemed to refer to the total Construction.

(x) Special Conditions: Annex 1(B) of the Contract Documents which amends or supplements the General Conditions of Contract.

Clause 8.1 (regarding custody of drawings) on page 8 is hereby amended to read as follows:

Two (2) sets of hardcopy and a soft copy of approved drawings shall be submitted by the contractor to the Employer and remain in the sole custody of the Employer but two(2) hard copies thereof shall be retained by the contractor. The Contractor shall provide and make at his own expense any further copies require by him. At completion of the works, the Contractor shall return all drawings generated under the contract.

Clause 8.2 (regarding copies of drawings) on page 8 is hereby amended to read as follows:

One copy of the approved Drawings submitted by the Contractor as aforesaid shall be kept by the Contractor on site and the same shall at all reasonable times be available for inspection and use by the Project Manager and any other person authorized in writing by the Project Manager.

Clause 56 (tax exemption) on page 29 is hereby replaced with the following text:

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

Accordingly, the Contractor authorizes UNDP to deduct from the Contractor's invoice any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UNDP before the payment thereof and the UNDP has, in each instance, specifically authorized the Contractor to pay such taxes, duties or charges under protest. In that event, the Contractor shall provide the UNDP with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized.

Provisions Supplementing the General Conditions of Contract for Civil Works, attached as Annex 1(A) hereto

Design by the Contractor. General Design

Based upon the Employer's Project requirements, as set forth in the Design Criteria Package prepared by the Employer, the Design and Build Contractor shall prepare Design Development documents to finalize the character of the Project as to structural, mechanical and electrical systems, materials, and other appropriate essential items of the Project. From approved Design Development Documents, the Design and Build Contractor will prepare work Drawings and Specifications setting forth in detail the requirements for the construction of the Project, and based upon codes, laws, or regulations which have been enacted at the time of their preparation.

These Development Documents shall be the basis for the design and construction of the Project.

The Contractor shall carry out, and be responsible for the design of the Works. The Design shall be prepared by qualified designers within the Contractor Team, who are consultants registered with the relevant Statutory Bodies in Zimbabwe.

Each Design Member of Contractor shall assign a sufficient number of its experts, to the Project so that the provisions of this Contract are complied with and the Design Services are carried out in accordance with the subcontract Services Agreement, which shall be submitted to the Project Manager for approval.

The Contractor warrants that its designers and design Subcontractors have the experience and capability necessary for the design. The Contractor undertakes that the designers shall be available to attend discussions with the Employer at all reasonable times, until the expiry date of the relevant Defects Notifications Period.

The Employer shall scrutinize the Contractor's design criteria and procedures and the items of reference within the period of fourteen (14) days before the Commencement Date, the Employer shall give notice of any error, fault or other defect found in the Contractor's design criteria and procedures on the reference items.

A detailed Bill of Quantities shall be prepared and priced by the contractor, whose final price shall be as indicated in the price schedule. Any errors and/ or omissions in the Bill of Quantities shall not absorb the contractor from their overall design and works execution liability and responsibility and shall not be regarded as variations to the Employer's Account.

h) The contractor unless otherwise provided in the contract, shall:

In respect of any defects or insufficiencies in the design of the works, be liable to rectify such defects or insufficiencies at their own cost and also be liable to compensate costs or losses incurred by the employer arising from a defective design on the works.

In all circumstances, obliged to ensure that the final approved design is fit for the purpose intended in the contract and warrants design defect liability on the works after practical project completion.

2. Documentation Necessary to Execute the Works

The Contractor's Documents shall comprise the technical documents required to satisfy all regulatory approvals, including the Bill of Quantities. The Contractor's Documents shall be written in the language for communications defined in the General Conditions of Contract (Clause 64).

The Contractor shall prepare all the Documents, necessary to execute the Works and pay all related statutory fees as applicable under the local Laws. The Employer's Project Manager shall have the right to inspect the preparation of all these documents, wherever, they are being prepared. When complete the documents shall be submitted to the Employer for their approval.

For each part of the Works, and except to the extent that the prior approval or consent of the Employer shall have been obtained.

In the case of the Contractor's Document which has been submitted for Employer's approval within five days, the Employer shall give notice to the Contractor that the Contractor's Document is approved, with or without comments, or that it fails (to the extent stated) to comply with the Contract.

Execution of such part of the Works shall not commence until the Employer has approved the Contractor's Document.

If the Employer instructs that further Documents from the Contractor are required for approval, the Contractor shall prepare them promptly. Any such approval or consent, or any review shall not relieve the Contractor from any obligations or responsibility.

The Contractor undertakes that the design, the execution and the completed Works will be in accordance with:

The Laws in the Country of Zimbabwe, and

The Contract Documents, as may be amended by the Parties in writing.

If errors, omissions, ambiguities, inconsistencies, inadequacies or other defects are found in the Contractor's Documents, the Documents and the Works shall be corrected at the Contractor's cost, notwithstanding any consent or approval under this Clause.

Execution of the Works

Pre-construction Meeting. Prior to the commencement of Work, the Design and Build Contractor shall attend a preconstruction conference with the Employer to discuss the progress Schedule, procedures for finalizing and handling working drawings and other submittals, and for processing Applications for Payment, and to establish a working understanding among the parties as to the contract deliverables.

Execution of actual building works shall not commence until after all preliminary site establishment requirements, a detailed Safety ,Health and Welfare plan, including scaffolding/ support systems plans are approved, and performance and insurance Bonds are obtained and submitted in line with the execution model of the bidding document.

The Contractor shall submit the Quality Assurance plan within fourteen (14) days of the Start Date, for approval by the Employer's Representative, and operations on site shall not commence until the scheme is approved.

4. Contractor's Supervision of the Works

The Contractor shall with due care and diligence design, execute and complete the Works and remedy any defects therein in accordance with the provisions of the Contract.

The Contractor shall establish and implement a scheme of Quality Assurance, including all supervision and testing procedures, records and all other things required to ensure that the Works are in accordance with provisions of the contract.

5. Design Copyright, Patents and Other Proprietary Rights

Except as it 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, process, inventions, ideas, know-how, or documents and other materials which the Contractor has developed or the 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, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UNDP. The intellectual property entitlement does not include repetition of the design other than on the site or sites to which this agreement relates, unless agreed and consented to in writing by UNDP and the Contractor.

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 the UNDP a perpetual license to use intellectual property or other proprietary rights solely for the purpose of and in accordance with the requirements of the contract.

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

Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, Bills of Quantities, recommendations, documents, and all other details compiled by or received by the Contractor under the Contract shall be the property of the UNDP, shall be made available for use or inspection by the 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.

6. Professional Liability / Malpractice/ Errors or Omissions

In addition to the insurance and liability provisions in the General Conditions of Contract for Civil Works,

the Design and Build Contractor shall purchase and maintain Professional Liability or malpractice or errors or omissions insurance coverage with a minimum limit equal to 12.50% of the estimated construction contract price for the project. Said coverage shall be continuously maintained and in effect for a period of not less than two (2) years from the effective date of this Agreement. The policy limit of liability shall not include legal fees and other defence costs.

If at any time during the aforementioned policy period there should be a cancellation, non-renewal, or lapse in coverage, professional liability coverage shall be extended for the remainder of the two year period with a supplemental extended reporting period (SERP) endorsement to take effect upon expiration of the policy period referenced above. The limits of liability applicable to the SERP coverage shall be equal to the limits of liability applicable to the policy reference above and to which the endorsement attaches.

7. Time Extensions

Should Design and Build Contractor be obstructed or delayed in the prosecution of or completion of the Work as a result of unforeseeable causes beyond the control of Design and Build Firm, and not due to its fault or neglect, including but not restricted to acts of God or of the public enemy, acts of government, fires, floods, epidemics, quarantine regulations, strikes or lockouts, Design and Build Contractor shall notify the Employer in writing within forty-eight (48) hours after the commencement of such delay, stating the cause of causes thereof, or be deemed to have waived any right which Design and Build Contractor may have had to request a time extension.

No interruption, interference, inefficiency, suspension or delay in the commencement or progress of the Work from any cause whatever in whole or in part, shall relieve Design and Build Contractor of its duty to perform or give rise to any right to damage or additional compensation from Employer. The Design and Build Contractor expressly acknowledges and agrees that it shall receive no compensation for delay. The Design and Build Contractor's sole remedy, if any, against the Employer will be the right to seek an extension to the Contract Time; provided, however, the granting of any such time extension shall not be a condition precedent to the aforementioned.

8. Subcontractor Insurance Requirements and Renewals

The Design and Build Contractor shall require each of its subcontractors to procure and maintain until the completion of the subcontractor's work, insurance of the types and to the limits specified in Clause 23 unless such insurance requirements for the subcontractor is expressly waived in writing by the Employer. All liability insurance policies, other than professional liability, worker's compensation and employer's liability policies, obtained by the Design and Build Contractor to meet the requirements of the Contract Documents shall name Employer as an additional insured and shall contain severability of interest provisions. The Employer shall also be designated as certificate holder. If any insurance provided pursuant to the Contract Document expires prior to the completion of the Work, renewal Certificate of insurance and, if requested by Employer, certified, true copies of the renewal policies, shall be furnished by the Design and Build contractor within thirty (30) days prior to the date of expiration. Upon expiration of an insurance policy term during the course of work under the contract, succeeding insurance policies shall be consecutive to the expiring policy.

9. Authority to Modify

Pursuant to the Financial Regulations and Rules of UNDP, only the UNDP Authorized Official possesses the authority to agree on behalf of UNDP to any modification of or change in this Agreement, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in this Contract shall be valid and enforceable against UNDP unless provided by an amendment to this Agreement signed by the Contractor and jointly by the UNDP Authorized Official.