INVITATION TO BID

LITB-2020-9155993

13 February 2020

UNITED NATIONS CHILDREN'S FUND (UNICEF)

Wishes to purchase

SO 20227072 - Pumps
THIS INVITATION TO BID HAS BEEN:

Prepared By:

Maryna Kazachynska
(To be contacted for additional information, NOT FOR SENDING OFFERS)
Email : mkazachynska@unicef.org

Verified By:

Valeria Markevych

UNICEF
BID FORM

BID FORM must be completed, signed and returned to UNICEF. Bid must be made in accordance with the instructions contained in this INVITATION.

TERMS AND CONDITIONS OF CONTRACT

Any Purchase Order resulting from this INVITATION shall contain UNICEF General Terms and Conditions and any other Specific Terms and Conditions detailed in this INVITATION.

INFORMATION

Any request for information regarding this INVITATION must be forwarded by email to the attention of the person who prepared this document, with specific reference to the Invitation number.

The Undersigned, having read the Terms and Conditions of INVITATION No. LITB-2020-9155993 set out in the attached document, hereby offers to execute the services specified in the Terms and Conditions set out in the document.

Signature: __________________________________________

Date: ____________________________

Name & Title: _______________________

Company: __________________________

Postal Address: _______________________

Tel No: ____________________________

Fax No: ____________________________

E-mail Address: _______________________

Validity of Offer: _______________________

Currency of Offer: _______________________

Please indicate after having read UNICEF Price & Discount stated in the Specific Terms and Conditions, which of the following Payment Terms are offered by you:

10 Days 3.0%_____15 Days 2.5%_____20 Days 2.0%_____30 Days Net_____}

Other Trade Discounts________________
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<td>Pump with a flow rate of 12 m3 / h, head 113 m, electric motor power 5.5 kW, power supply 400V/50Hz, with a soft start and control cabinet</td>
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<td>Pump with a flow rate of 12 m3 / h, head 84m, electric motor power 4kW, power supply 400V/50Hz, with a cable length of 3m with a soft start control cabinet</td>
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<td>24 m³/h feed pump, 91 m head, electric motor power 9.2 kW, power supply 400V/50Hz, with a soft start and control cabinet</td>
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<td>Pump feed 120m³/h, head 121m, electric motor power 55 kW, power supply 400V/50Hz, with a soft start and control cabinet</td>
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<td>10.2 m³/h pump, 140 m head, 5.5 kW electric motor, 400/50 V / Hz power supply, with 3 m cable length with soft start control cabinet</td>
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INVITATION TO BID Page 6 of 32 LITB-2020-9155993
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00110  SL005873  2 each

Pump with a flow rate of 6m³/h, head 81m, electric motor power 2.2 kW, power supply 400V/50Hz, with a soft start and control cabinet

List of required documents:

1. Conformity certificate (UA, EU)
2. Certificate of quality control system (EU, UA)
3. Technical passport
4. Warranty document
5. Manual on Ukrainian/Russian

**Incoterms & Delivery Requested**

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SPECIAL NOTES

The purpose of this tender is to invite Bids to establish Purchase Order for Goods to requested Consignee.

SUBMISSION DEADLINE
27 February 2020, 15:00 Kyiv time

SHIPPING INSTRUCTIONS
The goods should be delivered and handed to the following Consignee:

Delivery Duty Paid (DDP) UNICEF Warehouse: 3 Kompressorna Str., Bilogorodka, Kyiv region, Ukraine

SUMBISSION CONDITIONS
Tender proposal must be submitted in hard copies only and sent in the sealed envelope, which must be clearly marked with the tender number: LITB-2020-9155993.

Tender proposal must be sealed and numerated (all pages should be pierced together and each page with text/picture should have a number).

Requested documents (indicated under each item: EXCEPT Annex B and Bid Form) should be submitted not later than 5 (five) working days after bid closing date (submission deadline).

Language of the tender proposal # English, Ukrainian, Russian or combination of any.

SUMBISSION PLACE
Tender Proposals shall be sent in sealed envelope to UNICEF Ukraine and handed to the guard with indication “FOR TENDER”, verified with reference of attendance kept by the guard, prior 15:00 on the bid closing date (submission deadline).

Address: UNICEF Ukraine, 28 Instytutska Str., entrance B, Kyiv, 01021, Ukraine.

Proposals submitted otherwise (by e-mail, fax, in an opened envelope) shall be INVALIDATED.

PARTIAL BIDS
UNICEF will accept partial Bids.

PROPOSAL PREPARATION
The below are the PASS/FAIL criteria. In case the Bidder fails to provide any of the below documents, tender offer may not be considered technically acceptable:

1. Bid Form (page 3 of this document) which must be completed and signed. Proposals submitted without Bid Form will be INVALIDATED.

2. Completed Annex B with UAH Net Amounts (WITHOUT VAT) and LEAD TIME for each offered item -
   a) days or more;
   b) currency:
   the term of validity of proposal must be correctly indicated - 90
   the currency of proposal must be correctly indicated # UAH
c) commercial offer should include all costs (supplies, handling fee, packing, loading and transportation) for delivery of the goods to the Consignee;

d) LEAD TIME (from PO receipt to handover): Bidders must indicate how many calendar days will be required for goods delivery from the day of reception of the official signed copy of UNICEF Purchase Order till goods handover to the Consignee.

PLEASE MAKE SURE TO CHECK THAT OFFERED GOODS FULLY CORRESPOND TO REQUESTED SPECIFICATIONS FROM ANNEX B.

3. All documents requested from suppliers for each item (listed under each item's description).

4. In order to prove the requirements conformity Bidders must provide the following documents with their Proposals:

a. Registration Certificate. Only companies (or at least the lead entity in case of joint venture/consortium/ association), which are duly registered in Ukraine are eligible for submitting the proposals to this tender.

b. VAT Registration Certificate/Single Tax Payer Registration Certificate, if any.

c. Copy of Charter of the bidding company.

d. Banking details on the bank official letterhead in English with SWIFT and IBAN codes specified.

e. Financial Statement for the last 2 full years of Company's activity.

f. Filled out Vendor Registration Form (see Annex C) # only field marked in yellow are obligatory for maintaining.

g. At least 3 reference letters or a list of at least 3 clients/references (with both telephone and email contact information) we may contact regarding Bidder's experience.

h. Any document, stating company's name in English. In case of failing in provision of such, an official e-mail from company's contact person, indicating the name in English.

PLEASE NOTE THE FOLLOWING

1. Inquiry for additional information concerning this tender must be forwarded by e-mail to mkazachynska@unicef.org with the tender number reference LITB-2020-9155993 in the subject till 20 February 2020.

2. Please confirm in writing your participation in the tender by sending a confirming letter to the e-mail mkazachynska@unicef.org.

3. Opening of Bids: sealed envelopes will be publicly opened at 15:15 on the Bid Closing Date. One representative from each bidding company may attend the bid opening.

4. UNICEF will process the payments upon the Contract in UAH, including additional 20% VAT, subject to provision of Tax Invoice and copy of document,
confirming Tax Invoice is duly registered with Tax authorities of Ukraine, together with Invoice and Act of provision and acceptance of services.

REASONS FOR DISQUALIFICATION
a) filled out and signed Bid Form (page 3 of the tender document) hasn’t been submitted;
b) currency and/or validity of Bid is incorrectly indicated in the Bid Form;
c) late submission of proposal (after deadline);
d) failure to submit the full set of documents listed in PROPOSAL PREPARATION.
SPECIAL TERMS AND CONDITIONS

PART I # PURPOSE OF THIS INVITATION TO BID

1. Background

1.1 UNICEF promotes the rights and wellbeing of every child, in everything we do. Together with our partners, we work in 190 countries and territories to translate that commitment into practical action, focusing special effort on reaching the most vulnerable and excluded children, to the benefit of all children, everywhere.

2. Solicitation

2.1 UNICEF wishes to procure items in the quantities and with the specifications outlined in the schedules contained in this Solicitation Document.

2.2 This Solicitation Document is comprised of the following:

- This document.
- The UNICEF General Terms and Conditions of Contract (Goods) which are attached as Annex A to this document.
- Specifications/details in Ukrainian, which are attached as ANNEX B.
- Vendor registration form, which is attached as Annex C.
- Bid Form explanatory as Annex D.

2.3 This Solicitation Document is an invitation to treat and shall not be construed as an offer capable of being accepted or as creating any contractual, other legal or restitutionary rights. No binding contract, including a process contract or other understanding or arrangement, will exist between the Bidder and UNICEF and nothing in or in connection with this Solicitation Document shall give rise to any liability on the part of UNICEF unless and until a Purchase Order is signed by UNICEF and the successful Bidder.

PART II # BID SUBMISSION PROCESS

1. Bid Submission Schedule

1.1 Acknowledgement of receipt of Solicitation Document. Bidders are requested to inform UNICEF as soon as possible by EMAIL to Maryna Kazachynska at mka class="ch text-block" kachynska@unicef.org AND Dragana Galic at dgalic@unicef.org that they have received this Solicitation Document.

IMPORTANT: BIDS ARE NOT TO BE SENT TO THE INDIVIDUAL STATED ABOVE # ANY BIDS SENT TO THE NAMED ABOVE INDIVIDUAL WILL BE DISQUALIFIED.

1.2 Questions from Bidders. Bidders are required to submit any questions in respect of this Solicitation Document by EMAIL to Maryna Kazachynska at mka class="ch text-block" kachynska@unicef.org AND Dragana Galic at dgalic@unicef.org. The deadline for receipt of any questions is February 20th, 2020.

IMPORTANT: BIDS ARE NOT TO BE SENT TO THE INDIVIDUAL STATED ABOVE # ANY BIDS SENT TO THE NAMED ABOVE INDIVIDUAL WILL BE DISQUALIFIED.

Bidders are required to keep all questions as clear and concise as possible.
Bidders are also expected to immediately notify UNICEF in writing of any ambiguities, errors, omissions, discrepancies, inconsistencies or other faults in any part of the Solicitation Document, providing full details. Bidders will not benefit from such ambiguities, errors, omissions, discrepancies, inconsistencies or other faults.

UNICEF will compile the questions received. UNICEF may, at its discretion, at once copy any anonymized question and its reply to all other invited Bidders and/or post these on the UNICEF website and/or respond to the question at a bid conference. After any such bid conference, a Questions and Answers document may be prepared and posted on the UNICEF website.

1.3 Amendments to Solicitation Document. At any time prior to the Submission Deadline, UNICEF may, for any reason, whether at its own initiative or in response to a clarification requested by a prospective Bidder, modify the Solicitation Document by amendment. If the Solicitation Document was available publicly online, amendments will also be posted publicly online. Further, all prospective Bidders that have received the Solicitation Document directly from UNICEF will be notified in writing of all amendments to the Solicitation Document. In order to afford prospective Bidders reasonable time in which to take the amendment into account in preparing their Bids, UNICEF may, at its sole discretion, extend the Submission Deadline.

1.4 Samples/Certificates. Samples/Certificates are required for this solicitation process and must be sent to UNICEF at UNICEF Operations Section, 28 Instytutska, 01021 Kyiv, Ukraine (Tel: 380 44 3399379), attention: Maryna Kazachynska. The deadline for submission of samples/certificates is 5 (five) working days after Bid Closing Date stated in Article 1.5 below. Failure to timely submit the requested documents and/or samples might lead to the bid’s disqualification.

1.5 Submission Deadline. The deadline for submission of Bids is as follows: February 27th, 2020

The sealed envelope/envelopes (marked "LITB-2020-9155993") shall be hand delivered to UNICEF Operations Section, 28 Instytutska Street, 01021 Kyiv, Ukraine (Tel: 380 44 3399379) AND HANDED TO THE GUARD WITH INDICATION "FOR TENDER", verified by reference in attendance job kept by the guard, before 15:00 on the Bid Closing Date stated above.

Any Bids received by UNICEF after the Submission Deadline will be rejected.

1.6 Bid opening. Bids will be publicly opened on February 27th, 2020 at 15:15 Kyiv time. One representative from each bidding company may attend the bid opening.

2. Language

2.1 The Bid prepared by the Bidder and all correspondence and documents relating to the Bid exchanged by the Bidder and UNICEF, will be written in English, Ukrainian, Russian languages or combination of any. Supporting documents and printed literature furnished by the Bidder may be provided in another language with possible further translation request. When interpreting the Bid, the translated version of these supporting documents and printed literature will prevail over the original version of these documents. The sole responsibility for translation, including the accuracy of the translation will rest with the Bidder.
3. Validity of bids; Modification and Clarifications; Withdrawal

3.1 Validity Period. Bidders must indicate the validity period of their Bid. Bids should be valid for a period of not less than one hundred and twenty (120) days after the Submission Deadline. A Bid valid for a shorter period of time shall not be further considered. UNICEF may request the Bidder to extend the validity period. The Bid of Bidders who decline to extend the validity of their Bid shall become disqualified as no longer valid.

3.2 Other Changes. All changes to a Bid must be received by UNICEF prior to the Submission Deadline. The Bidder must clearly indicate that the revised Bid is a modification and supersedes the earlier version of their Bid, or state the changes from the original Bid.

3.3 Withdrawal of Bid. A Bid may be withdrawn by the Bidder on e-mailed, faxed or written request received by UNICEF from the Bidder prior to Submission Deadline. Negligence on the part of the Bidder confers no right for the withdrawal of the Bid after it has been opened.

3.4 Clarifications Requested by UNICEF. During the evaluation of Bids, UNICEF may, in its sole discretion, seek clarifications from any Bidder in order for UNICEF to fully understand the Bidder's Bid and assist in the examination, evaluation and comparison of Bids. UNICEF may seek such clarifications through written communications or may request an interview with any Bidder. No change in the price or substance of the Bid will be sought, offered or permitted, except as required in order to allow for correction of arithmetical errors discovered by UNICEF.

3.5 References. UNICEF reserves the right to contact any or all references supplied by the Bidder(s) and to seek references from other sources as UNICEF deems appropriate.

4. Eligibility; Bidder Information

4.1 Bidder. The term "Bidder" refers to those companies that submit a Bid pursuant to this Solicitation Document and "Bid" refers to all the documents provided by the Bidder in its response to this Solicitation Document. A Bid will only be eligible for consideration if it complies with the representations set out in Part V of this Solicitation Document, including the representations on ethical standards, including conflicts of interest.

4.2 Joint Venture, Consortium or Association.

(a) If the Bidder is a group of legal entities that will form or have formed a joint venture, consortium or association at the time of the submission of the Bid, each such legal entity will confirm in their joint 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 joint venture jointly and severally, and this will be evidenced by a Joint Venture Agreement among the legal entities, which will be submitted along with the Bid; and

(ii) if they are awarded the Purchase Order, the designated lead entity will enter into the Purchase Order with UNICEF, who will be acting for and on behalf of all the member entities comprising the joint venture.

(b) After the Bid has been submitted to UNICEF, the lead entity
identified to represent the joint venture will not be altered without the prior written consent of UNICEF.

(c) If a joint venture's Bid is the Bid selected for award, UNICEF will award the Purchase Order to the joint venture, in the name of its designated lead entity. The lead entity will sign the Purchase Order for and on behalf of all other member entities.

4.3 Bids from Government Organizations. The eligibility of Bidders that are wholly or partly owned by the Government will be subject to UNICEF's further evaluation and review of various factors such as being registered as an independent entity, the extent of Government ownership/share, receipt of subsidies, mandate, access to information in relation to this Solicitation Document, and others that may lead to undue advantage against other Bidders, and the eventual rejection of the Bid.

5. Preparation of Offer
5.1 Bidders are responsible to inform themselves in preparing their Bid.

- In this regard, the Bidders will ensure that they:
  - Examine all terms, requirements and formal submission instructions included in the Solicitation Document (including the Instructions to Bidders section);
  - Review the Solicitation Document to ensure that they have a complete copy of all documents;

- Review the standard UNICEF Contractual Provisions and the UNICEF General Terms and Conditions of Contract (Goods) for the supply of goods publicly available on the UNICEF Supply website:
  - http://www.unicef.org/supply/indexProcurementPolicies.html;
  - Review the UNICEF policies publicly available on the UNICEF Supply website: http://www.unicef.org/supply/indexProcurementPolicies.html. In particular, Bidders should familiarize themselves with the obligations imposed on suppliers and their personnel and sub-contractors under the UNICEF Policy Prohibiting and Combating Fraud and Corruption and the UNICEF Policy on Conduct Promoting the Protection and Safeguarding of Children;
  - Attend any bid conference if it is mandatory under this Solicitation Document;
  - Fully inform and satisfy themselves as to requirements of any relevant authorities and laws that apply, or may in the future apply, to the supply of the goods.

5.2 Bidders acknowledge that UNICEF, its directors, employees and agents make no representations or warranties (express or implied) as to the accuracy or completeness of this Solicitation Document or any other information provided to the Bidders.

5.3 Failure to meet all requirements and instructions in the Solicitation Document or to provide all requested information will be at the Bidder's own risk, and may result in rejection of the Bidder's Bid.

5.4 The Bid must be organized to follow the format of this Solicitation. Each Bidder must respond to the stated requests or requirements, and indicate that the Bidder understands and confirms acceptance of UNICEF's stated requirements. The Bidder should identify any substantive assumption made in preparing its offer. The deferral of a response to a question or issue to any contract negotiation stage (if any) is not acceptable. Any item not specifically addressed in the Bid will be deemed as accepted by the Bidder. Incomplete or inadequate responses, lack of response or misrepresentation in responding to any questions will affect the evaluation of the Bid.

5.5 The completed and signed Bid Form must be submitted together with the Bid. The Bid Form must be signed by a duly authorized representative of the Organization/Company.
5.6 Bids must be clearly marked with the Solicitation Document number.  
5.7 Also, if answer sheets are provided by UNICEF then these must be completed by the Bidder.  
5.8 Each Bidder acknowledges that its participation in any stage of the solicitation process for this Solicitation Document is at its own risk and cost. The Bidder is responsible for, and UNICEF is not responsible for, the costs of preparing its Bid or response to this Solicitation Document, submission of any samples, attendance at any bid conference, site visit, meetings or oral presentations, regardless of the conduct or outcome of the solicitation process.

6. Bid Documents: Confidentiality

6.1 This Solicitation Document, together with all Bid documents provided by the Bidder to UNICEF will be considered the property of UNICEF and will not be returned to the Bidders.

6.2 Information contained in the Bid documents, which the Bidder considers to be its confidential information, should be clearly marked "confidential", next to the relevant part of the text, and UNICEF will treat such information accordingly.

6.3 All information and documents provided to the Bidders by UNICEF (#Solicitation Document Materials#) shall be treated as confidential by the Bidders. If the Bidder declines to respond to this Solicitation Document, or, if the Bid is rejected or unsuccessful, the Bidder will promptly return all such Solicitation Document Materials to UNICEF, or destroy or delete all such Solicitation Document Materials. The Bidder shall not use the Solicitation Document Materials for any purpose other than the purpose of preparing a Bid and shall not disclose the Solicitation Document Materials to any third party, except: (a) with the prior written consent of UNICEF; (b) where the third party is assisting the Bidder in preparing the Bid, provided the Bidder has previously ensured that party’s adherence to this duty of confidentiality; (c) if the relevant Solicitation Document Materials are at the time of this Solicitation Document lawfully in the possession of the Bidder through a party other than UNICEF; (d) if required by law, and provided that the Bidder has previously informed UNICEF in writing of its obligation to disclose the Solicitation Document Materials; or (e) if the Solicitation Document Materials are generally and publicly available other than as a result of breach of confidence by the person receiving the Solicitation Document Materials.

7. Multiple bids and bids from related organizations.

7.1 Bidders shall not submit more than one Bid as part of this solicitation process.

7.2 If the Bidder is a group of legal entities that will form or have formed a joint venture, consortium or association at the time of the submission of the Bid then neither the lead entity nor the member entities of the joint venture may submit another Bid, either in its own capacity or as a lead entity or a member entity for another joint venture submitting another Bid.

7.3 UNICEF reserves the right to reject separate Bids submitted by two or more Bidders if the Bidders are related organizations and are found to have any of the following:

(a) they have at least one controlling partner, director or shareholder in common; or
(b) any one of them receive or have received any direct or indirect subsidy from the other(s);

or

(c) they have a relationship with each other, that gives one or more Bidders access to confidential information about, or influence over, the other Bid(s); or

(d) 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

(e) an expert proposed to be in the team of one Bidder participates in more than one Bid received for this solicitation process.

PART III #AWARD/ADJUDICATION OF BIDS

1. Award

1.1 Evaluation. The evaluation is carried out by UNICEF in accordance with UNICEF's regulations, rules and practices and all determinations are made in UNICEF's sole discretion.

After opening the Bids, UNICEF will carry out the following steps in the following order:

1. First, each Bid will be evaluated for compliance with the mandatory requirements of this Solicitation Document. Bids deemed not to meet all of the mandatory requirements will be considered non-compliant and rejected at this stage without further consideration. Failure to comply with any of the terms and conditions contained in this Solicitation Document, including, but not limited to, failure to provide all required information, may result in a Bid being disqualified from further consideration.

2. Second, UNICEF will evaluate each Bid to determine whether the products offered are acceptable commercially and technically and are of the required quality. Bids will be evaluated based on the INCOTERM(s) stated in Part IV clause 3.1 below. Where more than one INCOTERM is stated in Part IV clause 3.1 below, Bids will be evaluated based on whichever INCOTERM is in the best interest of UNICEF as determined by UNICEF in its sole discretion. UNICEF will award the Purchase Order to the Bidder offering a combination of the lowest acceptable prices and shortest lead-time, provided that UNICEF considers that the Bid to be reasonable and that it is in the interest of UNICEF to accept the Bid.

The supply unit at UNICEF Ukraine is looking for alternative materials to be used in the products on bid which could be considered sustainable to the environment during the raw manufacturing process all the way to disposal by the end user. Should you have a better solution than the one we have specified for the raw material component of the product, kindly submit it as an alternative to what is being offered including cost and material used.

1.2 Partial Bids. UNICEF will accept partial Bid.

1.3 Limited Award. In case of an award, Bidders that have not previously received Purchase Orders from UNICEF, may receive an order for a limited quantity until satisfactory performance is established.
1.4 Multiple Arrangements. UNICEF reserves the right to make multiple arrangements for any item(s) where UNICEF considers it to be in its best interest to do so.

1.5 Award Notification. UNICEF will only notify the Bidder(s) that has/have been awarded the Purchase Order(s) resulting from this solicitation process; UNICEF may, but is not required to, notify the other Bidders of the outcome of this solicitation process.

2. General Terms And Conditions Of Contract (Goods)
   2.1 UNICEF’s General Terms and Conditions of Contract (Goods) which are attached at Annex A to this Solicitation Document will apply to any Purchase Orders awarded in connection with this Solicitation Document. By signing the Bid Form, each Bidder is deemed to have confirmed its acceptance of the UNICEF General Terms and Conditions (Goods). The Bidder understands that if it proposes any amendments or additional terms to the UNICEF General Terms and Conditions (Goods), these must be clearly detailed in the Bid and may negatively affect the evaluation of the Bid.

3. Inspection
   3.1 Each Bidder will permit UNICEF, either itself or through a designated representative entity, to have access to the facilities where the products offered are manufactured, at all reasonable times to inspect the manufacturing site and processes for the production, quality control, quality assurance and packing of the products. The Bidder will provide reasonable assistance to the representatives for such appraisal, including copies of any documentation (including, but not limited to, test results or quality control reports) as may be necessary. The inspection may be carried out in conjunction with the appropriate national authority. Failure to do so may result in the rejection of the Bid.

4. Rights of UNICEF
   4.1 UNICEF reserves the following rights:

   (a) to accept any Bid, in whole or in part; to reject any or all Bids; or to cancel this solicitation process in its entirety;

   (b) to verify any information contained in Bidder’s response (and the Bidder will provide UNICEF with its reasonable cooperation with such verification).

   (c) to invalidate any Bid received from a Bidder that, in UNICEF’s sole opinion has previously failed to perform satisfactorily or complete contracts or Purchase Orders on time, or UNICEF believes is not in a position to perform the Purchase Order;

   (d) to invalidate any Bid that, in UNICEF’s sole opinion, fails to meet the requirements and instructions stated in this Solicitation Document.

   (e) to withdraw an award to a Bidder at any time up until a Purchase Order has been signed with such Bidder. UNICEF is not required to provide any justification, but will give notice prior to any such withdrawal of award.

   4.2 UNICEF is not liable to any Bidder for any costs, expense or loss incurred or suffered by such Bidder in connection with this Solicitation Document or solicitation process, including, but not limited to, any costs, expense or loss incurred as result
of UNICEF exercising any of its rights in paragraph 4.1 above.

PART IV # REQUIREMENTS

1. Prices and Discounts

1.1 Prices. The prices include the cost of packaging and packing the goods in accordance with the requirements set out on the UNICEF Supply website http://www.unicef.org/supply/index_41950.html. The price also includes delivery in accordance with the applicable INCOTERM.

1.2 Payment Terms. Invoices may be issued to UNICEF only after the delivery terms of the Purchase Order have been fulfilled. The standard terms of payment are net 30 days, after receipt of invoice. Payment will be effected by bank transfer in the currency of the Purchase Order.

1.3 Currency.

(a) Bidders are requested to provide unit prices in UAH. UNICEF will reject any Bids submitted in another currency.

(b) If the above paragraph (a) explicitly permits two or more specified currencies for the Bids, then for evaluation purposes only, offers submitted in a currency other than US Dollars will be converted into US Dollars using the United Nations rate of exchange in effect on the submission deadline date.

1.4 Discounts. Bidders are requested to advise as to:

(a) Quantity / volume discounts, in form of large quantity / volume discounts and staircase pricing (i.e. varying prices according to different quantities procured);

(b) Early payment discounts, i.e. payment within a specified period of time faster than UNICEF#s standard payment term of 30 days net;

(c) Trade discounts;

(d) Any other unconditional discounts.

1.5 Taxes. Article II, Section 7, of the Convention on the Privileges and Immunities provides, inter alia, that the United Nations, including UNICEF as a subsidiary organ, 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. All prices/rates quoted in the Bid must be net of any direct taxes and any other taxes and duties, unless otherwise specified in this Solicitation Document.

2. Implementation

2.1 Sub-contractors. Bidders must identify in their Bid, any products which may be offered by themselves, but originate from another supplier and/or country. All sub-contracting arrangements will be reviewed by UNICEF as part of its evaluation of the Bid.

2.2 Joint Ventures. The description of the organization of the joint venture/consortium/association must clearly define the expected role of each of the entities in the joint venture in delivering the requirements of this Solicitation Document, both in the Bid
and the Joint Venture Agreement. All entities that comprise the joint venture will be subject to the eligibility and qualification assessment by UNICEF.

Where a joint venture is presenting its track record and experience in a similar undertaking as those required in this Solicitation Document, it should present such information in the following manner:

a) Those that were undertaken together by the joint venture; and
b) Those that were undertaken by the individual entities of the joint venture expected to be involved in the performance of the activities defined in this Solicitation Document.

Previous contracts or Purchase Orders 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 joint venture or those of its members, but should only be claimed by the individual experts themselves in their presentation of their individual credentials.

3. Delivery

3.1 Incoterms. Bidders are requested to quote prices in accordance with the following delivery terms (INCOTERMS 2010): UNICEF Warehouse: 3 Kompressorna Str., Bilgorodka, Kyiv region, Ukraine.

Failure to quote in accordance with the requested INCOTERMS may result in invalidation of the Bid.

3.2 Deliveries will be made in accordance with instructions in UNICEF's Purchase Orders. Bidders will indicate the realistic lead-time for delivery for each item offered (subject to quantities). #Delivery lead-time# is the period from the date of receipt of a Purchase Order by the Supplier to the date of delivery of the goods in accordance with the applicable delivery term and instructions specified in the relevant Purchase Order and includes the period for manufacturing and packing the products, pre-delivery inspection (if applicable), obtaining any necessary regulatory authority approvals or licenses, shipping, and provision of all documentation required in connection with such delivery.

3.3 UNICEF will monitor and measure the performance of the successful Bidder, in comparison with the realistic lead-time indicated in its Bid.

4. Shelf Life and Warranty

4.1 Shelf life and Useable Lifespan. The Bidder will clearly state the minimum shelf life at time of dispatch for all pharmaceutical products or other perishable goods. For all other products, the Bidder will clearly state (as applicable) the usable lifespan (i.e. the recommended usage period).

4.2 Packing, Packaging and Labeling. All goods must meet the requirements for packing, packaging, packing list and labelling of the goods set out on the UNICEF Supply Website (http://www.unicef.org/supply/index_41950.html) and the additional requirements (if any) for packing, packaging, packing list and labelling set out in this Solicitation Document. This includes those requirements that apply to dangerous goods.

4.3 Warranty. The Bidder's warranty for the goods (including packaging) offered in its Bid will meet each of the following minimum criteria:
(a) The goods conform to the quality, quantity and specifications for the goods stated in the Purchase Order (including, in the case of perishable or pharmaceutical products, the shelf life specified in the Purchase Order);

(b) The goods conform in all respects to the technical documentation provided by the Bidder in respect of such goods and, if samples were provided to UNICEF prior to entering into the Purchase Order, the goods are equal and comparable in all respects to such samples;

(c) The goods are new and factory-packed;

(d) The goods are fit for the purposes for which such goods are ordinarily used and any purposes expressly made known to the Bidder by UNICEF;

(e) The goods are free from defects in design, manufacture, workmanship and materials;

(f) The goods are free from all liens, encumbrances or other third party claims;

(g) The goods are contained or packaged in accordance with the standards of export packaging for the type and quantities of the goods specified in the Purchase Order, and for the modes of transport of the goods specified in the Purchase Order (including but not limited to, in a manner adequate to protect them in such modes of transport), and marked in a proper manner in accordance with the instructions stipulated in the Purchase Order and applicable law.

4.4 Warranty Period. The Bidder will clearly state the period of validity of the warranty, including the start date of the warranty period. For all pharmaceutical products or other perishable goods, the period of validity of the warranty must not be less than the shelf life of the goods.

4.5 Assignment of Manufacturer Warranties. If the Bidder is not the original manufacturer of the goods or any part of the goods, the Bidder will be expected to assign to UNICEF (or, at UNICEF's instructions, the Government or other entity that receives the goods) all manufacturers' warranties in addition to any other warranties specified in the Purchase Order.

4.6 Extension of Warranty to Partners. The Bidder should note that the warranties are expected to be made to UNICEF and to extend to (a) each entity that makes a direct financial contribution to UNICEF for the purchase of goods; and (b) each Government or other entity that receives the goods.

5. Other Goods Requirements

5.1 Country of Origin. Items produced in countries other than that of the Bidder must be indicated, stating the country of origin. Bidders may be required to submit a Certificate of Origin of Goods issued by the Chamber of Commerce or other equivalent authority.

5.2 Samples. UNICEF reserves the right to request free, non-returnable samples for evaluation and testing by UNICEF, or its representative, of the item and/or of the
packing and packaging, prior to any award.

If samples are requested:

- Samples will be subject to technical review and laboratory testing and analysis where appropriate.
- Samples must correspond 100% to the product(s) being offered.
- Samples must include the manufacturer's packaging and labeling.
- In the event that the bid is successful, samples will be retained by UNICEF for comparison checking purposes against deliveries subsequently made.
- Samples should be labelled with the UNICEF Solicitation Document number, goods specifications as detailed in this Solicitation Document, Bidder#'s product reference and Bidder#'s name and address. UNICEF reserves the right to reject samples that are not labeled as requested.
- Failure to provide samples in accordance with the instructions requested under this paragraph 5.2 may result in invalidation of the Bid.

5.3 Alternative Products. If you have alternative product(s) that fulfill the same function or offer better performance in terms of quality, cost-effectiveness, environmental impact etc please include them in your Bid in addition to the offer for items specified in the schedules to this Solicitation Document. Please note that if these alternative products are deemed by UNICEF to be a viable alternative to the items specified in the schedules to this Solicitation Document, then, pending technical evaluation, we may issue a separate tender for the purpose of establishing agreements for such products.

IMPORTANT: If you have alternative product(s) to offer, please clearly indicate the advantages over the items detailed in the schedules to this Solicitation Document. Do not send a Bid only for an alternative product, i.e. the offer for an alternative product should be included as a separate part of the Bid for the items requested in this Solicitation Document. Do not send any samples for alternative products.

5.4 Packing, Packaging, Packing List, Labelling and Dangerous Goods Instructions. The Bidder will comply with the requirements for packing, packaging, packing list and labelling of goods set out on the UNICEF Supply Website (http://www.unicef.org/supply/index 41950.html) and the additional requirements (if any) for packing, packaging, packing list, labelling set out below in this Solicitation Document. This includes those requirements that apply to dangerous goods. The classification of goods (including packaging) as #dangerous goods# is a supplier responsibility and must be communicated to UNICEF when submitting the Bid. For any goods (including packaging) classified as dangerous goods, Bidders must submit all relevant Material Safety Data Sheets indicating accurate classification for transport purposes, storage, labeling and shipping requirements when submitting the Bid.

6. Liquidated Damages

6.1 Any Purchase Orders awarded in connection with this Solicitation Document will include the following clause on liquidated damages:

#In addition to, and without prejudice to any of the other rights and remedies of UNICEF including, but not limited to, those set out in the UNICEF General Terms and Conditions of Contract (Goods), if the Supplier fails to deliver the Goods under this Purchase Order in accordance with the stated time for delivery, or if UNICEF exercises its right to reject Goods that do not conform to the requirements in this Purchase Order,
UNICEF may claim liquidated damages from the Supplier and, at UNICEF’s option, the Supplier will pay such liquidated damages to UNICEF or UNICEF will deduct such liquidated damages from the Supplier’s invoice(s). Such liquidated damages will be calculated as follows: one half of one per cent (0.5%) of the Price of such Goods for each day of delay, until delivery of conforming Goods, up to a maximum of ten per cent (10%) of the value of this Purchase Order. The payment or deduction of such liquidated damages will not relieve the Supplier from any of its other obligations or liabilities pursuant to this Purchase Order.

PART V # BIDDER REPRESENTATIONS

1. Price # Most Favoured Customer

1.1 The Bidder confirms that the prices with respect to the goods specified in the Bid are the most favourable prices available to any customer of the Bidder (or any of the Bidder’s affiliates).

1.2 If at any time during the term of any Purchase Order resulting from the Bid, any other customer of the Bidder (or of any of the Bidder’s affiliates) obtains more favourable pricing terms than those provided to UNICEF, the Bidder will retroactively adjust the price and related pricing terms under the Purchase Order to conform to the more favourable terms and the Bidder will promptly pay UNICEF any amounts owing to UNICEF as a result of such retroactive price adjustment.

2. General Representations

By submitting its Bid in response to this Solicitation Document, the Bidder confirms to UNICEF as at the Submission Deadline:

2.1 The Bidder has (a) the full authority and power to submit the Bid and to enter into any resulting Purchase Order, and (b) all rights, licenses, authority and resources necessary, as applicable, to develop, source, manufacture and supply the goods and to perform its other obligations under any resulting Purchase Order. The Bidder has not and will not enter into any agreement or arrangement that restrains or restricts any person’s rights to use, sell, dispose of or otherwise deal with the goods.

2.2 All of the information it has provided to UNICEF concerning the goods and the Bidder is true, correct, accurate and not misleading.

2.3 The Bidder is financially solvent and is able to supply the goods to UNICEF in accordance with the requirements described in this Solicitation Document.

2.4 The use or supply of the goods does not and will not infringe any patent, design, trade-name or trade-mark.

2.5 The development, manufacture and supply of the goods has complied, does comply, and will comply with all applicable laws, rules and regulations.

2.6 The Bidder will fulfill its commitments with the fullest regard to the interests of UNICEF and will refrain from any action which may adversely affect UNICEF or the United Nations.

2.7 It has the personnel, experience, qualifications, facilities, financial
resources and all other skills and resources to perform its obligations under any resulting Purchase Order.

2.8 The Bidder agrees to be bound by the decisions of UNICEF, including but not limited to, decisions as to whether the Bidder’s Bid meets the requirements and instructions stated in this Solicitation Document and the results of the evaluation process.

3. Ethical Standards

UNICEF requires that all Bidders observe the highest standard of ethics during the entire solicitation process, as well as the duration of any Purchase Order that may be awarded as a result of this solicitation process. UNICEF also actively promotes the adoption by its suppliers of robust policies for the protection and safeguarding of children and the prevention and prohibiting of sexual exploitation and sexual abuse.

By submitting its Bid in response to this Solicitation Document, the Bidder makes the following representations and warranties to UNICEF as at the Submission Deadline:

3.1 In respect of all aspects of the solicitation process the Bidder has disclosed to UNICEF any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest. In particular, the Bidder has disclosed to UNICEF if it or any of its affiliates is, or has been in the past, engaged by UNICEF to provide services for the preparation of the design, specifications, cost analysis/estimation, and other documents to be used for the procurement of the goods requested under this Solicitation Document; or if it or any of its affiliates has been involved in the preparation and/or design of the programme/project related to the goods requested under this Solicitation Document.

3.2 The Bidder has not unduly obtained, or attempted to obtain, any confidential information in connection with the solicitation process and any Purchase Order that may be awarded as a result of this solicitation process.

3.3 No official of UNICEF or of any United Nations System organisation has received from or on behalf of the Bidder, or will be offered by or on behalf of the Bidder, any direct or indirect benefit in connection with this Solicitation Document including the award of the Purchase Order to the Bidder. Such direct or indirect benefit includes, but is not limited to, any gifts, favours or hospitality.

3.4 The following requirements with regard to former UNICEF officials have been complied with and will be complied with:

(a) During the one (1) year period after an official has separated from UNICEF, the Bidder may not make a direct or indirect offer of employment to that former UNICEF official if that former UNICEF official was, during the three years prior to separating from UNICEF, involved in any aspect of a UNICEF procurement process in which the Bidder has participated.

(b) During the two (2) year period after an official has separated from UNICEF, that former official may not, directly or indirectly on behalf of the Bidder, communicate with UNICEF, or present to UNICEF, about any matters that were within such former official’s responsibilities while at UNICEF.

3.5 Neither the Bidder nor any of its affiliates, or personnel or
directors, is subject to any sanction or temporary suspension imposed by any United Nations System organisation or other international inter-governmental organisation. The Bidder will immediately disclose to UNICEF if it or any of its affiliates, or personnel or directors, becomes subject to any such sanction or temporary suspension during the term of the Purchase Order. If the Bidder or any of its affiliates, or personnel or directors becomes subject to any such sanction or temporary suspension during the term of the Purchase Order, UNICEF will be entitled to suspend the Purchase Order for a period of time up to thirty (30) days or terminate the Purchase Order, at its sole choice, with immediate effect upon delivery of a written notice of suspension or termination, as the case may be, to the Bidder. If UNICEF chooses to suspend the Purchase Order it will be entitled to terminate the Purchase Order at the end of the thirty (30) days# suspension at UNICEF's sole choice.

3.6 The Bidder will (a) observe the highest standard of ethics; (b) use its best efforts to protect UNICEF against fraud, in the solicitation process and in the performance of any resulting Purchase Order; and (c) comply with the applicable provisions of UNICEF's Policy Prohibiting and Combatting Fraud and Corruption which can be accessed on the UNICEF website at http://www.unicef.org/supply/indexProcurementPolicies.html. In particular, the Bidder will not engage, and will ensure that its personnel, agents and sub-contractors do not engage, in any corrupt, fraudulent, coercive, collusive or obstructive conduct as such terms are defined in UNICEF's Policy Prohibiting and Combatting Fraud and Corruption.

3.7 The Bidder will comply with all laws, ordinances, rules and regulations bearing upon its participation in this solicitation and the UN Supplier Code of Conduct (available at the United Nations Global Marketplace website - www.ungm.org).

3.8 Neither the Bidder nor any of its affiliates, is engaged, directly or indirectly, (a) in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32, or the International Labour Organisation's Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999); or (b) in the manufacture, sale, distribution, or use of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.

3.9 The Bidder has taken and will take all appropriate measures to prevent sexual exploitation or abuse of anyone by its personnel including its employees or any persons engaged by the Bidder to perform any services in the Bidder's participation in this solicitation. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, will constitute the sexual exploitation and abuse of such person. The Bidder has taken and will take all appropriate measures to prohibit its personnel including its employees or other persons engaged by the Bidder, from exchanging any money, goods, services, or other things of value, for sexual favours or activities or from engaging in any sexual activities that are exploitive or degrading to any person.

3.10 The Bidder confirms that it has read UNICEF's Policy on Conduct Promoting the Protection and Safeguarding of Children. The Bidder will ensure that its Personnel understand the notification requirements expected of them and will establish and maintain appropriate measures to promote compliance with such requirements. The Bidder will further cooperate with UNICEF's implementation of this Policy.

3.11 The Bidder will inform UNICEF as soon as it becomes aware of any incident or report that is inconsistent with the undertakings and confirmations provided in this Article 3.

3.12 Each of the provisions in Article 3 of this Part V constitutes an
essential condition of participation in this solicitation process. In the event of a breach of any of these provisions, UNICEF is entitled to disqualify the Bidder from this solicitation process and/or any other solicitation process, and to terminate any Purchase Order that may have been awarded as a result of this solicitation process, immediately upon notice to the Bidder, without any liability for termination charges or any liability of any kind. In addition, the Bidder may be precluded from doing business with UNICEF and any other entity of the United Nations System in the future.

4. Audit

4.1 From time to time, UNICEF may conduct audits or investigations relating to any aspect of a Purchase Order awarded in relation to this Solicitation Document, including but not limited to the award of the Purchase Order and the Bidder’s compliance with the provisions of Article 3 above. The Bidder will provide its full and timely cooperation with any such audits or investigations, including (but not limited to) making its personnel and any relevant data and documentation available for the purposes of such audits or investigations, at reasonable times and on reasonable conditions, and granting UNICEF and those undertaking such audits or investigations access to the Bidder’s premises at reasonable times and on reasonable conditions in connection with making its personnel and any relevant data and documentation available. The Bidder will require its sub-contractors and its agents to provide reasonable cooperation with any audits or investigations carried out by UNICEF.
INSTRUCTION TO BIDDERS

1. MARKING AND RETURNING BIDS

1.1 Bids shall be submitted in the manner specified earlier in this solicitation document. Detailed submission guidance at paragraphs 1.5, 1.6 and/or 1.7 should then be followed accordingly.

1.2 The Bid Form/Invitation to Bid for Services Form must be signed, and submitted together with the Bid. The Bid Form/ Invitation to Bid for Services Form should be signed by the duly authorized representative of the submitting company.

1.3 Bids must be clearly marked with the ITB(S) number and the name of the company submitting the bid.

1.4 Bidders should note that Bids received in the following manner will be invalidated:
   a) with incorrect (as applicable) postal address, email address or fax number;
   b) received after the stipulated closing time and date;
   c) failure to quote in the currency(ies) stated in the ITB(S);
   d) in a different form than prescribed in the ITB(S).

1.5 Sealed bids (as applicable)

1.5.1 See paragraph 1.1 above concerning applicability of this paragraph.

1.5.2 The Bid must be sent for the attention of the unit and address as specified in this solicitation document. Bids not sent in this manner will be disqualified.

1.5.3 Sealed bids (1 original and 2 copies) must be securely closed in a suitable envelope (marked with the ITB(S) number and the name of the company submitting the bid) and dispatched to arrive at the UNICEF office indicated no later than the closing time and date. Bids received in any other manner will be invalidated.

1.5.4 Any delays encountered in the mail delivery will be at the risk of the Bidder.

1.5.5 In case of any discrepancies between the original bid and a copy, the original will prevail.

1.6 Faxed bids (as applicable)

1.6.1 See paragraph 1.1 above concerning applicability of this paragraph.

1.6.2 Fax bids must be returned to the ONLY ACCEPTABLE FAX NUMBER for Bids as specified in this solicitation document. Bidders should note that Bids received at any other fax number will be invalidated.

1.7 E-mailed bids (as applicable)

1.7.1 See paragraph 1.1 above concerning applicability of this paragraph.

1.7.2 All e-mailed Bids must be submitted to the ONLY ACCEPTABLE E-MAIL ADDRESS as specified in this solicitation document. No other recipient should be "Cc" or "Bcc" in the e-mail submission. Bids received in any other manner will be invalidated.

1.7.3 All Bids submitted by e-mail must be submitted as email attachments. Email links (e.g. to documents to be downloaded from cloud based folders) are not acceptable unless otherwise specifically requested. Bids submitted as a link or through a link will be invalidated.

2. OPENING OF BIDS

2.1 Bids received prior to the stated closing time and date will be kept unopened. UNICEF will open Bids when the specified time has arrived and no Bid received thereafter will be considered.

2.2 UNICEF will accept no responsibility for the premature opening of a Bid which is not properly addressed or identified.

2.3 Bidders, or their authorized representative, may attend the public opening of the Bid at the time, date and location specified. Bidders should note that the Bid Opening is the only time and place where information related to pricing from competitors is available.

3. UNGM REGISTRATION

3.1 UNICEF is part of the United Nations Global Marketplace(UNGM). Accordingly, all bidders are encouraged to become a UNICEF vendor by creating a vendor profile in the UNGM website: www.ungm.org

4. AWARD NOTIFICATION

4.1 UNICEF reserves the right to make a public notification of the outcome of an ITB(S) advising product/service, awarded supplier and total value of award.
ANNEX A
GENERAL TERMS AND CONDITIONS

GENERAL TERMS AND CONDITIONS OF CONTRACT (Goods)

Definitions and UNICEF Supply Website

1.1 In these General Terms and Conditions ("Goods"), the following terms have the following meanings:

"Affiliates" means, with respect to the Supplier, any of its corporate affiliates or associates, including parent entities, subsidiaries, and other entities in which it owns a substantial interest.

"Confidential Information" means information or data that is designated as confidential at the time of exchange between the Parties or promptly disclosed as confidential in writing when furnished in tangible form or disclosed orally, and includes information, the confidential or proprietary nature of which is or should be reasonably apparent from the inherent nature, quality or characteristics of such information.

"Contract" means the contract or agreement designated in the Contract.

"Contract" means the purchase order that incorporates these General Terms and Conditions ("Goods"). It includes purchase orders issued by UNICEF, whether or not they are issued under a long-term arrangement or similar contract.

"Goods" means the goods specified in the relevant section of the Contract.

"Host Government" means a Government with which UNICEF has a programme of development cooperation and includes a Government in a country in which UNICEF provides humanitarian assistance.

"INCOMERMS" means the international commercial term known as the INCOMERMS rules issued by the International Chamber of Commerce, most recently issued at the effective date of the Contract.

"Incorporated" means the Contractor and UNICEF together and a "Party" means each of the Contractor and UNICEF.

"Supplier" means the Contractor and UNICEF, respectively.

"Suppliers' Personnel" means the Supplier's employees, agents, individuals or other representatives.

"Trade" means the terms and conditions of trade as stated in the Contract.

"UNICEF Supply Website" means UNICEF's public access website available at http://www.unicef.org/supply/index.cfm, as may be updated from time to time.

1.2 These General Terms and Conditions of Contract, UNICEF's Policy on Publishing and Combating Fraud and Corruption, the UNICEF's Policy on Contract Monitoring, the Protection and Safeguarding of Children, the UN Supplier Code of Conduct, and UNICEF's Information Disclosure Policy referred to are included in the Contract, as well as any other policies applicable to the Supplier, are available on the UNICEF Supply Website. The Supplier represents that it has reviewed all such policies as of the effective date of the Contract.

2. Delivery, Inspection, Risk of Loss

2.1 The Supplier will deliver the Goods to the Consignee at the place and within the time period for delivery stated in the Contract. The Supplier will comply with the INCOTERMS or similar trade terms expressly stated in the Contract as applying to the Goods to be supplied under the Contract and all other delivery terms and instructions stated in the Contract. Notwithstanding any INCOTERMS, the Supplier will obtain any export licenses required for the Goods. The Supplier will ensure that UNICEF receives all necessary transport documents in a timely manner so as to enable UNICEF to take delivery of the Goods in accordance with the requirements of the Contract. The Supplier will further seek to accept instructions from any party other than UNICEF for entries authorized by UNICEF to give instructions to the Supplier in connection with the supply and delivery of the Goods.

2.2 The Supplier will use its best efforts to accommodate reasonable requests for changes of dates to the requirements for the Goods (such as packaging, packing and labeling requirements, shipping instructions or delivery dates) agreed by the Goods set out in the Contract. If UNICEF requests any material change to the requirements for the Goods, shipping instructions or delivery dates, UNICEF and the Supplier will impose any necessary changes to the Contract, including as to

Price and the time schedule. Any such agreed changes will become effective only when they are set out in a written amendment to the Contract signed by both UNICEF and the Supplier. Should the Parties fail to agree on any such changes within thirty (30) days, UNICEF will have the option to terminate the Contract without penalty notwithstanding any other provision of the Contract.

2.3 The Supplier acknowledges that UNICEF may monitor the Supplier’s performance under the Contract. The Supplier agrees to provide its full cooperation with such performance monitoring at no additional cost or expense to UNICEF and provide relevant information as reasonably requested by UNICEF including, but not limited to, the date of receipt of the Goods, detailed delivery status, costs to be charged and payments made by UNICEF or pending inspection.

2.4 UNICEF or the Consignee of different origin from UNICEF will have a reasonable time to inspect the Goods after delivery. At UNICEF’s request, the Supplier will provide its reasonable cooperation to UNICEF or the Consignee with regard to such inspection, including but not limited to providing such relevant information as reasonably requested by UNICEF or the Consignee. The Supplier acknowledges that any inspections of the Goods by or on behalf of UNICEF or the Consignee does not constitute a determination that the specifications for the Goods set out in the Contract (including the mandatory technical requirements) have or have not been met. The Supplier will be required to comply with its warranty and other contractual obligations whether or not UNICEF or the Consignee carries out an inspection of the Goods.

Delivery and Acceptance Consequences of Delays and Non-conforming Goods

2.5 If the Supplier determines it will be unable to deliver all or some of the Goods to the Consignee by the delivery dates stipulated in the Contract, the Supplier will immediately contact UNICEF to determine the most expedient means for delivering the Goods and, at the Supplier's cost (unless the delay is due to force majeure as defined in Article 6.1 below) reasonably requested by UNICEF to do so. Partial deliveries of Goods will be accepted unless prior written approval for such partial delivery has been given by UNICEF to the Supplier.

2.6 Delivery of the Goods will not constitute acceptance of the Goods. If some or all of the Goods do not conform to the requirements of the Contract, or if the Supplier delivers the Goods late or fails to deliver the Goods for any part of the Goods in accordance with the agreed delivery dates and delivery terms and instructions, UNICEF may, without prejudice to any of its other rights and remedies, exercise one or more of the following rights under the Contract at UNICEF's option:

(a) UNICEF can accept and refuse to accept any or all of the Goods concluding those that do conform to the Contract. If UNICEF rejects the Goods, the Supplier will, at its own cost, arrange for the prompt return of the rejected Goods and, at UNICEF's option, the Supplier will promptly replace the rejected Goods with Goods of equal or better quality and will be responsible for all costs related to such replacements or UNICEF may exercise its other rights set out below;

(b) UNICEF may procure all or part of the Goods from other sources, in which case the Supplier will be responsible for any additional costs beyond the balance of the Price for such Goods;

(c) Upon UNICEF's demand, the Supplier will refund all payments (or any made by UNICEF in respect of the rejected Goods or the Goods that have not been delivered in accordance with the delivery dates and delivery terms;

(d) UNICEF can give written notice of breach and, if the Supplier fails to remedy the breach, can terminate the Contract in accordance with Article 6.1 below;

(e) UNICEF can require the Supplier to pay liquidated damages as set out in the Contract.

Further in Article 6.1 below, the Supplier expressly acknowledges that, in the event of any termination, UNICEF takes delivery of all or some of the Goods that have been delivered late or otherwise not in full conformity with the delivery terms and instructions or that are not or full conformity with the requirements of the Contract, this does not constitute a waiver of UNICEF's rights in respect of such late delivery or non-conformity Goods.

Risk of Loss Title to Goods

2.7 Risk of loss, damage or destruction of Goods supplied under the Contract and responsibility for strengthen and paying for freight and insurance will be governed by the
ANNEX A
GENERAL TERMS AND CONDITIONS

3.8 UNICEF will have the right to set-off against any amounts or amounts due and payable by UNICEF to the Supplier under the Contract, any payments, adjustments or other claims (including, without limitation, any overpayment made by UNICEF to the Supplier) owing by the Supplier to UNICEF under the Contract or under any other contract or agreement between the Parties. UNICEF will not be required to give the Supplier prior notice before exercising such right of set-off (such notice being waived by the Supplier). UNICEF will promptly notify the Supplier after it has exercised such right of set-off, provided however that the failure to give such notification will not affect the validity of such set-off.

3.9 Each of the Parties paid by UNICEF may be subject to a post-payment audit by UNICEF’s internal and/or external auditors or by other authorized agents of UNICEF, at any time during the term of the Contract and/or three (3) years after the Contract term expires. UNICEF will be entitled to a refund from the Supplier of amounts such audits or audits determined were not in accordance with the Contract regardless of the reasons for such payments (including but not limited to the actions or omissions of UNICEF’s staff or other persons).


4.1 The Supplier represents and warrants that as of the effective date and throughout the term of the Contract, (a) it has full authority and power to enter into the Contract and to perform its obligations under the Contract and the Contract is a legal, valid and binding obligation, enforceable against it in accordance with its terms; (b) it has, and will maintain throughout the term of the Contract, all rights, licenses, authorizations and permits necessary to perform the Contract, to the extent applicable to develop, source, manufacture and supply the Goods and to perform its other obligations under the Contract; (c) all of the information concerning the Goods and the Supplier that it has previously provided to UNICEF (or that it provides to UNICEF during the term of the Contract) is true, current, accurate and not misleading; and (d) it is financially solvent and is able to supply the Goods to UNICEF in accordance with the terms and conditions of the Contract, (e) the use or supply of the Goods does not and will not infringe any patent, design, trade-name or trade mark; (f) it has not and will not enter into any agreement or arrangement that restrains or restricts any person’s rights to use, sell, dispose of or otherwise deal with the Goods, and (g) the development, manufacture and supply of the Goods is, and will continue to be, in compliance with all applicable laws, rules and regulations. The Supplier will indemnify UNICEF in accordance with the fullest extent to the interests of UNICEF and will refrain from any action which may adversely affect UNICEF or the United Nations.

4.2 The Supplier further represents and warrants that the Goods (including packaging) conform to the quality, quantity and specifications for the Goods stated in the Contract, (a) in the case of perishable or pharmaceutical products, the shelf life specified in the Contract is in accordance with all applicable technical documentation provided by the Supplier; (b) the supplier (or its representatives) has tested and determined or otherwise verifiable evidence that the Goods comply with all applicable requirements, policies, procedures, regulations, orders and laws that govern the manufacture, sale, marketing or use of the Goods. All claims for deficiency, non-conformance, or breach of warranty must be in writing and made in accordance with the procedures prescribed in the Contract and applicable law.

4.3 The warranties provided in Article 4.2 will remain valid for the warranty period specified in the Contract. Provided that the warranty period for pharmaceutical goods or other perishable products will be no less than the shelf life of those Goods specified in the Contract, and (b) if an warranty period or shelf life is specified in the Contract, the warranties will not renounce their liability for any perishable goods, or other products that have expired or been delivered prior to the expiry of the warranty period specified. As a minimum, any such warranties must be in compliance with all applicable laws, rules and regulations.

4.4 If the Supplier is not the original manufacturer of the Goods or any part of the Goods, the Supplier assigns to UNICEF, or at UNICEF’s request, the Government or other entity that receives the Goods, all manufacturers’ warranties in addition to any other warranties under the Contract.

4.5 The representations and warranties made by the Supplier in Articles 4.1 and 4.2 and the Supplier’s obligations as set out in Articles 4.3 and 4.4 above are made to and are for the benefit of each entity that makes a direct financial contribution to the purchase of Goods; and (d) each Government or other entity that receives the Goods.
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4.6 The Supplier will indemnify, hold and save harmless and defend, at its own expense, UNICEF, its officials, employees, consultants and agents, each entity that makes a direct financial contribution to the purchase of the Goods and each Government or other entity that receives the Goods, from and against all suits, claims, demands, losses and liability of any nature or kind, including costs and expenses, by a third party and arising out of the acts or omissions of the Supplier or its Personnel or sub-contractors in the performance of the Contract. This provision will extend to but not be limited to (a) claims and liability in the nature of workers' compensation (b) product liability, and (c) any actions or claims pertaining to the alleged infringement of a patent, design, trade name or trademark arising in connection with the Goods or other liabilities arising out of the use of patented inventions or devices, copyrighted material or other intellectual property provided or licensed to UNICEF under the Contract or used by the Supplier, its Personnel or sub-contractors in the performance of the Contract.

4.7 UNICEF will report any such suits, proceedings, claims, demands, losses or liability to the Supplier within a reasonable period of time after having received actual notice. The Supplier will have sole control of the defense, settlement and compromise of any such suit, proceeding, claim or demand except with respect to the assessment or defense of the privileges and immunities of UNICEF or any matter relating to UNICEF’s privileges and immunities including matters relating to UNICEF’s relations with Host Governments, which are between the Supplier and UNICEF. Only UNICEF itself or relevant governmental entities will assert and maintain UNICEF will 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.

Insurance

4.8 The Supplier will comply with the following insurance requirements:

(a) The Supplier will execute and maintain in effect with reputable insurers and in sufficient amounts, insurance against all the Supplier’s risks under the Contract, including, but not limited to, the risk of claims arising out of or related to the Supplier’s performance of the Contract, including the following:

(i) Insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

(ii) General liability insurance against all risks in respect of the Contract and claims arising out of the Contract, including, but not limited to, product liability insurance, in an adequate amount to cover all claims arising under or in connection with the Supplier’s performance under the Contract. The Supplier’s product liability insurance will cover the direct and indirect financial consequences of liability, including all costs, including replacement costs, related to recall campaigns authorized by UNICEF or third parties as a result of an underlying claim; and

(iii) All appropriate workers’ compensation and employer’s liability insurance, or an equivalent, with respect to its Personnel and sub-contractors to cover claims for death, bodily injury or damage to property arising from the performance of the Contract; and

(iv) Such other insurance as may be agreed upon in writing between UNICEF and the Supplier.

(b) The Supplier will maintain the insurance coverage referred to in paragraph (a) above during the term of the Contract and for a period after the Contract terminates exceeding the end of any applicable limitation period with regard to claims against which the insurance is obtained.

(c) The Supplier will be responsible to fund all amounts within any policy deductible or retention.

(d) Except with regard to the insurance referred to in paragraph (a) above, the Insurance policies for the Supplier’s insurance required under this Article 4.8 will be named UNICEF as an additional insured, but will exclude a waiver by the insurer of any subrogation rights against UNICEF and must provide that UNICEF will receive timely (30 days) written notice from the insurer prior to any cancellation or change of coverage.

(e) The Supplier will, upon request, provide UNICEF with satisfactory evidence of the insurance required under this Article 4.8.

(f) Compliance with the insurance requirements of the Contract will not limit the Supplier’s liability other under the Contract or otherwise.

Liability

4.9 The Supplier will pay UNICEF promptly for all less, destruction or damage to UNICEF’s property caused by the Supplier’s Personnel or sub-contractors in the performance of the Contract.

5. Intellectual Property and Other Proprietary Rights: Confidentiality

5.1 UNICEF otherwise expressly provided for in the Contract:

(a) Subject to paragraph (d) below, no UNICEF will not be deemed to be an infringing and other proprietary rights with regard to products, processes, inventions, data, know-how, facts or other documents or other intellectual property ("Contract Materials") that (a) the Supplier develops for UNICEF under the Contract and which bear a direct relation to the Contract or (b) are produced, prepared or authored in consequence of, or during the course of, the performance of the Contract. The terms "Contract Materials" include, but is not limited to, all data, drawings, photographs, plans, reports, recommendations, estimates, documents developed or recorded by, and all other data compiled by or received from, the Supplier under the Contract. The Supplier acknowledges and agrees that Contract Materials constitute works made for hire for UNICEF. Contract Materials will be treated as UNICEF’s Confidential Information and will be deemed only to authorized UNICEF officials on a need-to-know basis. UNICEF shall not be liable to any third party for damages suffered by the Supplier in any event involved with the Contract.

(b) UNICEF will in no case be liable to the Supplier for any loss, damage or expense suffered by the Supplier in the performance of the Contract, including, but not limited to, any loss, damage or expense resulting from any action or omission by UNICEF.

(c) At UNICEF’s request, the Supplier will take all necessary steps to execute all necessary documents and generally assist in securing such proprietary rights and transferring title to, in the case of intellectual properties referred to in paragraph (d) above, back to them to UNICEF in compliance with the requirements of the applicable law and of the Contract.

Confidentiality

5.2 Confidential Information that is considered proprietary by either Party and that is delivered or disclosed by the Discloser ("Discloser") to the other Party ("Recipient") during the performance of the Contract will be held in confidence by the Recipient. The Recipient will use the same care and discretion to avoid disclosure of the Discloser’s Confidential Information as the Discloser uses for its own Confidential Information and will use the Discloser’s Confidential Information solely for the purpose for which it was disclosed to the Recipient. The Recipient will not disclose the Discloser’s Confidential Information to any other party:

(a) except to those of its Affiliates, employees, officials, representatives, agents and subcontractors who have a need to know such Confidential Information for purposes of performing obligations under the Contract;

(b) unless the Confidential Information (i) is obtained by the Recipient from a third party without restriction, (ii) is disclosed by the Discloser to a third party without any obligation of confidentiality, (iii) is known to the Recipient prior to disclosure by the Discloser, or (iv) at any time is developed by the Recipient independently of any disclosures under the Contract.

5.3 If the Recipient receives a request for disclosure of UNICEF’s Confidential Information pursuant to any judicial or law enforcement process, before any such disclosure is made the Supplier will give UNICEF sufficient notice of such request in order to allow UNICEF to have a reasonable opportunity to secure the intervention of the relevant national Government to establish protective measures or take such other action as may be appropriate, and this will be subject to the relevant authority to request disclosure. UNICEF may disclose the Supplier’s Confidential Information to the extent required pursuant to provisions of its governing bodies.

5.4 The Supplier may not subcontract at any time to any other person, Government or authorized entity to UNICEF, any information known or as by reason of its association with UNICEF that has not been made public, except with the prior authorizations of UNICEF, nor will the Supplier at any time use such information to private advantage.
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End of Contract

5.5 Upon the expiry or earlier termination of the Contract, the Supplier will:
(a) return to UNICEF all of UNICEF’s Confidential Information or any other Confidential Information not returned to the Supplier in writing; and
(b) transfer to UNICEF all intellectual and other proprietary information in accordance with Article 9 (Transfers).

6. Termination, Force Majeure

6.1 If one Party is in material breach of any of its obligations under the Contract, the other Party may give it a notice of material breach (the “Notice of Breach”) requiring the breach to be remedied (the “Remediation Period”). If the breaching Party does not remedy the breach within the thirty (30) days period of the Notice of Breach, the non-breaching Party may terminate the Contract. The termination will be effective thirty (30) days after the non-breaching Party gives the breaching Party notice of termination. The termination of this contract will result in accordance with Article 9 (Transfers) and Article 10 (Costs and Expenses) below.

Additional Termination Rights of UNICEF

6.2 In addition to the termination rights under Article 6.1 above, UNICEF can terminate the Contract in its sole discretion upon receipt of notice of a material breach by the Supplier, without any liability for termination charges or any other liabilities of any kind:
(a) if the termination is described in, and in accordance with, Article 7 (Ethical Standards); or
(b) if the Supplier breaches any of the provisions of Articles 5.2-5.4 (Conduct); or
(c) if the Supplier is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stays on any payment or repayment obligations, or applies to be declared insolvent; this is granted a moratorium or a stay, or is declared insolvent; this makes an assignment for the benefit of one or more of its creditors; (v) has a receiver appointed on account of the insolvency of the Supplier; (x) enters into any loan or other arrangement in respect of all or any part of the Supplier’s reasonable expectation, subject to a material adverse change in its financial condition that threatens to substantially affect the ability of the Supplier to perform any of its obligations under the Contract.

6.3 In addition to the termination rights under Articles 6.1 and 6.2 above, UNICEF can terminate the Contract at any time by providing written notice to the Supplier in any case in which UNICEF’s standard applicable to the performance of the Supplier to UNICEF’s contract applicable to the Contract is curtailed or terminated, whether in whole or in part. UNICEF can also terminate the Contract upon sixty (60) days’ written notice to the Supplier without having to provide any justification.

6.4 As soon as it receives a notice of termination from UNICEF, the Supplier will immediately take steps to cease provision of the Goods in a prompt and orderly manner and to minimize and will bear all costs from UNICEF regarding Goods in transit (if any) and will not undertake any further or additional commitments or obligations following the date it receives the termination notice. In addition, the Supplier will take any other actions that may be necessary, or that UNICEF may direct as wrong, for the protection of its interests and for the protection and preservation of any property (whether tangible or intangible) related to the Contract that is in the possession of the Supplier and in which UNICEF has or may be reasonably expected to acquire an interest.

6.5 If the Contract is terminated, no payment will be due from UNICEF to the Supplier except for Goods delivered in accordance with the requirements of the Contract and only if such Goods were ordered, requested or otherwise provided prior to the Supplier’s notice of notice of termination from UNICEF or, in the case of termination by the Supplier, the effective date of such termination. The Supplier will have no claim for any further payment beyond payments in accordance with this Article 6.5 but will remain liable to UNICEF for all loss or damage which may be suffered by UNICEF by reason of the Supplier’s default including but not limited to cost of the purchase and delivery of replacement or substitute goods.

6.6 The termination rights in this Article 6 are in addition to all other rights and remedies of UNICEF under the Contract.

Force Majeure

6.7 If one Party is rendered permanently unable, whether or at part by reason of force majeure to perform its obligations under the Contract, the other Party may terminate the Contract on the same terms and conditions as are provided for in Clause 9 above, except that the period of notice will be seven (7) days instead of three (3) days. "Force majeure" means any unforeseeable and irresistible events arising from causes beyond the control of the Parties, including acts of nature or war without declared or implied assistance, mediation, arbitration, or other acts of a similar nature or force. "Force majeure" does not include any event which is caused by negligence or intentional action of a Party, to any event which a diligent Party could reasonably have been expected to take into account and plan for at the time the Contract was entered into for the unforeseeability of funds, auditors to make any payment required under the Contract, or any economic conditions, including but not limited to, suppliers, price escalation, or labour availability or any event resulting from hard conditions or legal challenges for the Supplier including civil unrest associated with documents at which UNICEF is operating or is about to operate or is withdrawing from, or an event including from UNICEF's insolvency, emergency, or similar response requirements.

7. Ethical Standards

7.1 The Supplier will be responsible to the professional and technical competence of the Personnel including its employees and will select, train, work under the guidance of Personnel, and when appropriate individuals who will perform effectively in the implementation of the Contract, respect the local laws and customs, and conform to a high standard of moral and ethical conduct.

7.2 (a) The Supplier represents and warrants that no official of UNICEF or any UNICEF Nation System organization has received from or on behalf of the Supplier, or will be offered by or on behalf of the Supplier, any direct or indirect benefit in connection with the Contract, including the award of the Contract to the Supplier. Such direct or indirect benefits include, but are not limited to, any gifts, favors or hospitality;

(b) The Supplier represents and warrants that the following requirements with regard to new UNICEF officials have been complied with and will be complied with:
(i) During the one (1) year period after an official has separated from UNICEF, the Supplier may not make a direct or indirect offer of employment to any former UNICEF officials if that former UNICEF official was, during the three years prior to separating from UNICEF involved in any aspect of a UNICEF procurement process in which the the Supplier has participated;
(ii) During the two (2) year period after an official has separated from UNICEF, that former official may not, directly or indirectly, be employed by the Supplier, communicate with UNICEF, or present to UNICEF about any matters that were within such former official’s responsibilities while at UNICEF;

(c) The Supplier represents that, at request of all aspects of the Contract, terminating the award of the Contract by UNICEF to the Supplier and the suspension or suspension by representatives of UNICEF, it has disclosed to UNICEF any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest.

7.3 The Supplier further represents and warrants that neither it nor any of its Affiliates, or Personnel or directors, is subject to any sanctions or temporary suspension imposed upon an UNICEF Nation System organization or any other international intergovernmental organization. The Supplier will immediately disclose to UNICEF if it or any of its Affiliates, or Personnel or directors, becomes subject to any such sanction or temporary suspension during the term of the Contract.

7.4 The Supplier will (a) observe the highest standards of ethics; (b) use its best efforts to protect UNICEF against fraud, in the performance of the Contract; and (c) comply with the applicable provisions of UNICEF’s Policies, Procedures, and Compliance. In particular, the Supplier will not engage, and will ensure that its Personnel and any representatives do not engage, in any corrupt, fraudulent, coercive, collusive or obstructive conduct, or any form of fraud or misrepresentation, or conduct that is in any way sanction or temporary suspension during the term of the Contract.

7.5 The Supplier will, during the term of the Contract, comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract and the standards or conduct required under the UN Supplier Code of Conduct available at the United Nations Global Marketplace website - www.unmark.org.

7.6 The Supplier further represents and warrants that neither it nor any of its Affiliates, or Personnel or directors, is engaged, directly or indirectly, in any prohibited transaction with the rights set out in the
ANNEX A
GENERAL TERMS AND CONDITIONS

7. The Supplier represents and warrants that it has taken and will take all appropriate measures to prevent sexual exploitation or abuse of anyone by its Personnel including its employees or any persons engaged by the Supplier 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, will constitute the sexual exploitation and abuse of such person. In addition, the Supplier represents and warrants that it has taken and will take all appropriate measures to prevent any Personnel including its employees or other persons engaged by the Supplier, from exchanging any money, goods, services, or other things of value, for sexual favours or activities or from engaging in any sexual activities that are exploitative or degrading to any person. This provision constitutes an essential term of the Contract and any breach of this representation and warranty will enable UNICEF to terminate the Contract immediately upon notice to the Supplier, without any liability for termination charges or any other liability of any kind.

8. The Supplier will ensure UNICEF as soon as it becomes aware of any incident or report that is in accordance with the understandings and confirmations provided in this Article 7.

9. The Supplier acknowledges and agrees that each of the provisions in Article 7 constitutes an essential term of the Contract.

9.1 UNICEF will be entitled, in its sole discretion and at its sole choice, to suspend or terminate the Contract and any other contract between UNICEF and the Supplier in measure to mitigate any losses or damage to UNICEF if the Supplier breaches any of the understandings and confirmations provided in this Article 7 or if the Supplier fails to discharge any of its obligations or if the Supplier breaches any of the understandings and confirmations provided in this Article 7 or if the Supplier fails to discharge any of its obligations.

9.2 Any suspension or termination under this Article 7 will be without any liability for termination charges or any other liability of any kind.

9.3 The Supplier will use its best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to, the Contract. Where the Parties wish to settle such an amicable settlement through conciliation, the conciliation will take place in accordance with the UNCITRAL Conciliation Rules then in force, or according to such other procedure as may be agreed between the Parties. Any dispute, controversy or claim between the Parties arising out of the Contract which is not resolved within ninety (90) days after one Party receives a request from the other Party for amicable settlement can be referred to either party in arbitration. The arbitration will take place in accordance with the UNCITRAL Arbitration Rules then in force. The venue of the arbitration will be New York, NY, USA. The decision of the arbitral tribunal will be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal will have no authority to award interest in excess of the London Inter-Bank Offered Rate (LIBOR) plus prevailing and any such interest will be simple interest only. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

10. Notices

10.1 Any notice, request or consent required or permitted to be given or made pursuant to the Contract will be in writing, and addressed to the persons named in the Contract for the delivery of notices, requests or consents. Notices, requests or consents will be delivered in person, by registered mail, or by confirmed email transmission. Notices, requests or consents will be deemed received upon delivery of delivery (in person), upon signature of receipt (by registered mail), or twenty-four (24) hours after confirmation of receipt (by email) from the addressee's email address (if delivered by confirmed email transmission).

11. Other Provisions

11.1 The Supplier acknowledges UNICEF's commitment to transparency as outlined in UNICEF's Information Disclosure Policy, and confirms that it will provide UNICEF with public disclosure of the terms of the Contract should UNICEF so determine and by whatever means UNICEF determines.

11.2 The failure of one Party to object to or take affirmative action with respect to any breach of the other Party will be in violation of the terms of the Contract will not constitute and will not be construed to be a waiver of the violation at issue, or of any future violation, breach or wrongful conduct.

11.3 The Supplier will be considered as having the legal status of an independent contractor as regards UNICEF. Nothing contained in the Contract will be construed as making the Parties principal and agent or joint venturers.

11.4 (a) Except as expressly provided in the Contract, the Supplier will be responsible as its sole cost for providing all the necessary personnel, equipment, material and supplies and for making all arrangements necessary for the performance of its obligations under the Contract.

(b) In the event that the Supplier requires the services of sub-contractors to perform any obligations under the Contract, the Supplier will notify UNICEF of this. The terms of any sub-contract will be subject to, and will be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

(c) The Supplier confirms that it has read UNICEF's Policy on Conduct Promoting the Protection and Safeguarding of Children. The Supplier will ensure that its Personnel understands the necessary requirements expected of them and will establish and maintain appropriate measures to promote compliance with such requirements. The Supplier will further cooperate with UNICEF's implementation of this policy.

(d) The Supplier will be fully responsible and liable for all services performed by its Personnel and sub-contractors and for their compliance with the terms and conditions of the Contract. The Supplier's Personnel, including individual sub-contractors, will not be considered in any respect as being the employees or agents of UNICEF.

9.3 The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to, the Contract. Where the Parties wish to settle such an amicable settlement through conciliation, the conciliation will take place in accordance with the UNCITRAL Conciliation Rules then in force, or according to such other procedure as may be agreed between the Parties. Any dispute, controversy or claim between the Parties arising out of the Contract which is not resolved within ninety (90) days after one Party receives a request from the other Party for amicable settlement can be referred to either Party in arbitration. The arbitration will take place in accordance with the UNCITRAL Arbitration Rules then in force. The venue of the arbitration will be New York, NY, USA. The decision of the arbitral tribunal will be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal will have no authority to award interest in excess of the London Inter-Bank Offered Rate (LIBOR) plus prevailing and any such interest will be simple interest only. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.
ANNEX A
GENERAL TERMS AND CONDITIONS

11.5 The Supplier will not, without the prior written consent of UNICEF, assign, transfer, pledge or make other disposition of the Contract, or of any part of the Contract, or of any of the Supplier's rights or obligations under the Contract.

11.6 No grant of time to by a Party to cure a default under the Contract, nor any delay or failure by a Party to exercise any right or remedy available to it under the Contract will be deemed to prejudice any rights or remedies available to it under the Contract or constitute a waiver of any rights or remedies available to it under the Contract.

11.7 The Supplier will not seek or file any lien, attachment or other encumbrance against any moneys due or to become due under the Contract, and will not permit any other person to do so. It will immediately remove or obtain the removal of any lien, attachment or other encumbrance that is secured against any moneys due or to become due under the Contract.

11.8 The Supplier will not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNICEF or the United Nations. Except as regards references to the name of UNICEF for the purposes of annual reports or communications between the Parties and between the Supplier and its Personnel and sub-contractors, the Supplier will not, in any manner whatsoever use the name, emblem or official seal of UNICEF or the United Nations, or any abbreviation of the name of the United Nations, in connection with its business or otherwise without the written permission of UNICEF.

11.9 The Contract may be translated into languages other than English. The translated version of the Contract is for convenience only, and the English language version will govern in all circumstances.

11.10 No modification or change in the Contract, and no waiver of any of the provisions, nor any additional contractual relationship of any kind with the Supplier will be valid and enforceable against UNICEF unless set out in a written amendment to the Contract signed by an authorized official of UNICEF.

11.11 The provisions of Articles 2.8, 2.9, 3.8, 3.9, 4, 5, 7, 8, 9, 11.1, 11.2, 11.4(a), 11.6 and 11.8 will survive delivery of the Goods and the expiry or earlier termination of the Contract.