



## **GENERAL CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS**

In these General Conditions of Contract for the provision of Goods (hereinafter referred to as “GCC”), the United Nations Industrial Development Organization (UNIDO) and the Contractor shall each be referred to as a “Party” and collectively as “Parties”. Words and abbreviations that are not specifically defined or explained, but which have commonly known technical, financial or legal meanings, shall be used herein in accordance with such recognized meanings.

If the context so requires it, singular means plural and vice versa.

Reference to any gender includes any other gender.

### **1. LEGAL STATUS OF THE PARTIES**

- 1.1 Pursuant, inter alia, to the Constitution of UNIDO and the Conventions on the Privileges and Immunities of the United Nations and the Specialized Agencies, UNIDO has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its mandate.
- 1.2 The Contractor shall have the legal status of an independent contractor vis-à-vis UNIDO, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or sub-contractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
- 1.3 The Contractor shall immediately report any change in its legal status to UNIDO.

### **2. RESPONSIBILITIES OF THE CONTRACTOR**

- 2.1 The Contractor shall carefully study the Contract and its Annexes. Where the Contractor observes errors, inconsistencies, omissions or ambiguities, they shall be immediately referred in writing to UNIDO for UNIDO’s written interpretation or correction. If the Contractor fails to so notify UNIDO, the Contractor shall be deemed to have waived any claim relating to said error, inconsistency, omission or ambiguity and shall bear an appropriate amount attributable to the costs of any correction.
- 2.2 The Contractor shall exercise all reasonable skills, care and diligence in the provision of the Goods under the Contract and shall carry out all its responsibilities in accordance with the highest recognized professional standards, and provide the Goods in the most expeditious and

economical manner consistent with the requirements set forth in the Contract and with the best interest of UNIDO.

- 2.3 The Contractor shall be fully responsible, in particular, for the acts or omissions of its officials, employees, agents, sub-contractors, other representatives or similar assigned by the Contractor, directly or indirectly, to provide the Goods or any part thereof under the Contract (collectively, the Contractor's "Personnel" or "Team").
- 2.4 The Contractor shall provide all the facilities and services required by the Contractor's Personnel for the execution of the Contract. Expenses of every kind incurred in connection with such execution shall be solely for the account of the Contractor. Such expenses shall include, but shall not be limited to, the cost of wages, housing, food, travel, medical attention and insurance.

### **3 ASSIGNMENT**

The Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of UNIDO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on UNIDO. Any assignment by the Contractor, which is not authorized by UNIDO, will be void and UNIDO reserves the right in such case, without prejudice to other rights or remedies, to terminate the Contract without liability effective upon the Contractor's receipt of notification of termination. Except as permitted with respect to any approved sub-contractors, the Contractor shall not delegate any of its obligations under the Contract, except with the prior written consent of UNIDO. Any such unauthorized delegation, or attempt to do so, shall not be binding on UNIDO.

### **4 SUB-CONTRACTING**

- 4.1 In the event that the Contractor requires the services of sub-contractors other than those specified in the Bid to perform any obligations under the Contract, and except as may be provided for in the Contract, the Contractor shall obtain the prior written approval of UNIDO.
- 4.2 UNIDO shall be entitled, at its sole discretion, to review the qualifications of any sub-contractors and to reject any proposed sub-contractor that UNIDO reasonably considers is not qualified to perform obligations under the Contract.
- 4.3 The approval or rejection by UNIDO of a sub-contractor shall not relieve the Contractor of any of its obligations under the Contract.
- 4.4 Any such rejection shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its sub-contractors.
- 4.5 The terms of any sub-contract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

## **5 PURCHASE OF GOODS**

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

### **5.1 DELIVERY OF GOODS**

The Contractor shall provide to UNIDO (or the UNIDO's Consignee designated in the Contract) such shipping documentation as are specified in the Contract or, otherwise, as are customarily utilized in the trade. The Contractor shall hand over or make available the Goods, and UNIDO shall receive the Goods, at the place for the delivery of the Goods and within the time for delivery of the Goods specified in the Contract. Delivery of the Goods shall not be deemed in itself as constituting acceptance of the Goods by UNIDO. Unless expressly authorized by UNIDO, the Contractor shall not make partial deliveries.

### **5.2 INSPECTION OF THE GOODS**

The Goods may be inspected prior to delivery. The Contractor shall notify UNIDO when the Goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, UNIDO or its designated inspection agents may also inspect the Goods upon delivery in order to confirm that the Goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to UNIDO or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the Goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

### **5.3 PACKAGING OF THE GOODS**

The Contractor shall use its best efforts to package the Goods and technical documentation for delivery in a sustainable and environmentally-friendly manner and to reduce emissions, use energy efficiently, eliminate wasteful practices and adverse environmental effects, and in such a manner as to prevent their damage or deterioration during transportation. The Goods shall be properly packed and marked in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the Goods. The packing, in particular, shall mark the Purchase Order number and any other identification information provided by UNIDO, as well as such other information as is necessary for the correct handling and safe delivery of the Goods. The metric system of weights and measures shall be used by the Contractor and the estimates of quantities involved shall be made and recorded in metric units, except when otherwise specified in the Contract. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials. The Contractor may be held liable for any claims, which may arise as a result of improper packing. One copy of the Contractor's packing list identifying the contents according to the item numbers appearing on the Purchase Order shall be enclosed in each container.

#### **5.4 TRANSPORTATION & FREIGHT**

Unless otherwise specified in the Contract (including, but not limited to in any “INCOTERM” or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the Goods in accordance with the requirements of the Purchase Order. The Contractor shall transport the Goods and technical documentation in a sustainable and environmentally-friendly manner and use its best efforts to reduce emissions, use energy efficiently, eliminate wasteful practices and adverse environmental effects. The Contractor shall ensure that UNIDO receives all necessary shipping documents before the delivery of the Goods, as specified in the Contract, in order to enable UNIDO/the Consignee to take delivery of the Goods in accordance with the requirements of the Contract. Where available, the Contractor shall submit to UNIDO a carbon emission calculation report indicating the amount of CO<sub>2</sub> emissions generated to move the Goods to the delivery place. If applicable, the equipment, supplies and technical documentation shall be stored in accordance with the conditions specified in the Purchase Order.

#### **5.5 WARRANTIES**

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

5.5.1 The Goods, including all packaging and packing thereof, conform to the technical specifications, are fit for the purposes for which such Goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

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

5.5.3 The Goods are of the quality, quantity and description required by the Contract;

5.5.4 The Goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

5.5.5 The Goods are new and unused, unless procurement of used Goods is approved in advance in writing by UNIDO;

5.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the Goods by UNIDO in accordance with the Contract;

5.5.7 During any period in which the Contractor’s warranties are effective, upon notice by UNIDO that the Goods do not conform to the requirements of the Contract, the Contractor shall promptly, and at its own expense, correct such non-conformities or, in case of its inability to do so, replace the defective Goods with Goods of the same or better quality or, at its own cost, remove the defective Goods and fully reimburse UNIDO for the purchase price paid for the defective Goods; and

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

## 5.6 ACCEPTANCE OF GOODS

Under no circumstances shall UNIDO be required to accept any Goods that do not conform to the specifications or requirements of the Contract. UNIDO may condition its acceptance of the Goods and related services, if applicable, upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall UNIDO be obligated to accept any Goods unless and until UNIDO has had a reasonable opportunity to inspect the Goods. If the Contract specifies that UNIDO shall provide a written acceptance of the Goods, the Goods shall not be deemed accepted unless and until UNIDO in fact provides such written acceptance. In no case shall payment by UNIDO in and of itself constitute acceptance of the Goods.

## 5.7 REJECTION OF GOODS, DELAYS AND REMEDIAL ACTIONS

Notwithstanding any other rights of, or remedies available to UNIDO under the Contract, in case any of the Goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, UNIDO, at its sole option, may reject the Goods, and within thirty (30) days following receipt of notice from UNIDO of such rejection of the Goods, the Contractor shall, in the sole option of UNIDO:

- 5.7.1 provide a full refund upon return of the Goods, or a partial refund upon a return of a portion of the Goods, by UNIDO; or,
- 5.7.2 replace the Goods with goods of equal or better quality; or,
- 5.7.3 repair the Goods in a manner that would enable the Goods to conform to the specifications or other requirements of the Contract; and,
- 5.7.4 pay all costs relating to the repair of the defective Goods, as well as the costs relating to the storage of any such defective Goods and for the delivery of any replacement Goods to UNIDO.

5.8 Should there be any delay in the performance of the Contract or any part thereof, the Contractor shall promptly notify UNIDO in writing, giving the cause of the delay. Subject to Article 13, if the Contractor fails to provide the Goods required within the specified time and/or to take remedial actions as specified in this Article, UNIDO may procure the Goods from another source. In addition to any other rights or remedies available to UNIDO under the Contract, including, but not limited to, the right to terminate the Contract or withhold the payment, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement. UNIDO shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the Goods for the Contractor's account. Subject to Article 13, if the Contractor fails to deliver any or all of the Goods or perform any of the services within the time period specified in the Contract, UNIDO may, without prejudice to any other rights and remedies, deduct from the Contract Price an amount of 0.25% of the price of such Goods or unperformed services, if applicable, for each week of delay, up to maximum of 10% of the Contract Price. UNIDO may withhold any payment to the Contractor, nullify the whole or part of any prior payment, to such an extent as may be necessary to protect UNIDO from loss under the Contract on account of the Contractor's failure to comply with this Article and/or to make payments properly for material, Goods or associated services. The withholding by UNIDO

of any payment shall not affect the Contractor's obligation to continue performance of its obligations under the Contract, including any remedial action.

#### **5.9 TITLE**

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

#### **5.10 EXPORT LICENSING**

The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to UNIDO under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of UNIDO, UNIDO shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with UNIDO to enable UNIDO to take appropriate measures to resolve the matter.

### **6 INDEMNIFICATION**

6.1 The Contractor shall indemnify, hold and save harmless and defend at its own expense, UNIDO, its officers, agents and employees, from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses, arising out of acts, omissions, negligence or misconduct of the Contractor or its officers, agents, representatives, employees, or sub-contractors in the performance of the Contract. This requirement shall extend to claims or liabilities in the nature of workmen's compensation and to claims or liabilities arising out of the use of patented inventions or devices. The obligations under this paragraph do not lapse upon termination of the Contract.

6.2 In the event the use by UNIDO of any Goods, property or services provided or licensed to UNIDO by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

6.2.1 procure for UNIDO the unrestricted right to continue using such Goods or services provided to UNIDO;

6.2.2 replace or modify the Goods or services provided to UNIDO, or part thereof, with the equivalent or better Goods or services, or part thereof, that is non-infringing; or

6.2.3 refund to UNIDO the full price paid by UNIDO for the right to have or use such Goods, property or services, or part thereof.

## **7 INSURANCE AND LIABILITY**

- 7.1 The Contractor shall pay UNIDO promptly for all loss, destruction, or damage to the property of UNIDO caused by the Contractor's Personnel or by any of its agents, other representatives, or sub-contractors, or anyone else directly or indirectly employed by the Contractor or any of its sub-contractors in the performance of the Contract.
- 7.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
- 7.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
  - 7.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's Personnel sufficient to cover all claims for injury, death and disability, or any other benefits required, in connection with the performance of the Contract;
  - 7.2.3 liability insurance to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its Personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and
  - 7.2.4 such other insurance as may be agreed upon in writing between UNIDO and the Contractor.
- 7.3 The Contractor's liability policies shall also cover sub-contractors and all defense costs and shall contain a standard "cross liability" clause.
- 7.4 The Contractor acknowledges and agrees that UNIDO accepts no responsibility for providing life, health, accident, travel or any other insurance coverage, which may be necessary or desirable in respect of any Personnel performing services for the Contractor in connection with the Contract.
- 7.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNIDO, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
- 7.5.1 name UNIDO as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
  - 7.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against UNIDO;

7.5.3 provide that UNIDO shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,

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

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

7.7 Except for any self-insurance program maintained by the Contractor and approved by UNIDO for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNIDO. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNIDO with evidence, in the form of certificate of insurance or such other form as UNIDO may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNIDO reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 7.5.3, above, the Contractor shall promptly notify UNIDO concerning any cancellation or material change of insurance coverage required under the Contract.

7.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

## **8 ENCUMBRANCES AND LIENS**

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

## **9 EQUIPMENT FURNISHED BY UNIDO TO THE CONTRACTOR**

Title to any equipment and supplies that may be furnished by UNIDO to the Contractor for the performance of any obligations under the Contract shall rest with UNIDO, and any such equipment shall be returned to UNIDO at the completion of the Contract or any earlier date. Such equipment, when returned to UNIDO, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate UNIDO for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

## **10 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS**

- 10.1 UNIDO shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials, which the Contractor has developed for UNIDO under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNIDO.
- 10.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, UNIDO does not and shall not claim any ownership interest thereto, and the Contractor grants to UNIDO a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 10.3 At the request of UNIDO, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNIDO in compliance with the requirements of the applicable law and of the Contract.
- 10.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of UNIDO, shall be made available for use or inspection by UNIDO at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNIDO authorized officials on completion of the services under the Contract.
- 10.5 Notwithstanding the foregoing provisions, for software products and/or source codes that are proprietary of the Contractor and have to be provided as-is, integrated or customized under the Contract, the Parties may agree on different terms for the license in a separate software license agreement.

## **11 USE OF UNIDO NAME, EMBLEM OR OFFICIAL SEAL OF UNIDO**

The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNIDO, nor shall the Contractor in any manner whatsoever use the name, emblem or official seal of the United Nations or UNIDO, or any abbreviation of the name of the United Nations or UNIDO in connection with its business or otherwise without the prior written permission of UNIDO.

## **12 CONFIDENTIAL NATURE OF DOCUMENTS, PERSONAL DATA AND INFORMATION**

- 12.1 All information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Contract, and that is designated as confidential (“Information”), including,

without limitation, maps, designs, drawings, photographs, mosaics, plans, reports, recommendations, estimates, specifications, computer programs, and documents, as well as any personal, technical, or financial information and data, shall be held in confidence by that Party and shall be handled as follows:

12.2 The Recipient shall:

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

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

12.3 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 12, the Recipient may disclose Information to:

12.3.1 any other party with the Discloser's prior written consent; and

12.3.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees, officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, provided that, for these purposes a controlled legal entity means (i) a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or (ii) any entity over which the Party exercises effective managerial control.

12.4 Unless otherwise authorized in writing by UNIDO, the Contractor shall use the Information only in the performance of the Contract. Upon completion or termination of the Contract, the Contractor shall return the Information to UNIDO.

12.5 The Contractor may disclose Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of UNIDO, the Contractor will give UNIDO sufficient prior notice of a request for the disclosure of Information in order to allow UNIDO to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

12.6 UNIDO reserves the right to publish or otherwise make public the Contractor's name, country of registration and address, the Contract Price, and any information regarding the Contract including descriptions of the Goods or services provided under the Contract. UNIDO may disclose Information to another entity of the United Nations System and to the extent as required pursuant to the UNIDO Constitution or consistent with or pursuant to resolutions or regulations of the General Conference of UNIDO or policies, rules or regulations promulgated thereunder.

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

12.8 The Contractor shall be liable for any breach of confidentiality or any indirect disclosure that could violate the interests of UNIDO. The extent of any such liability shall be directly proportional to the extent of the damage caused.

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

### 13 **FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

13.1 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor. Defects in equipment, material or supplies, or delays in their availability (unless due to *force majeure*), labor disputes, strikes or financial difficulties shall not constitute an event of *force majeure*. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which UNIDO is engaged in, preparing to engage in, or disengaging from any humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

13.2 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event, which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract or termination under Article 14. The Contractor shall be liable for any damages resulting from lack of notice of the *force majeure* event.

13.3 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, UNIDO shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 14, except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, UNIDO shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

## 14 **TERMINATION**

- 14.1 UNIDO may terminate the Contract in whole or in part and at any time, upon thirty (30) days' notice of termination to the Contractor. In the event such termination is not caused by the Contractor's negligence or fault, UNIDO shall be liable to the Contractor for payment in respect of the Goods and services already provided, for the cost of repatriation of the Contractor's Personnel, agents, other representatives, or authorized sub-contractors, for necessary terminal expenses of the Contractor, and for the cost of such urgent work as is essential and as the Contractor is asked by UNIDO to complete. The Contractor shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of UNIDO's notice of termination. The initiation of arbitral proceedings in accordance with Article 17.2 shall not be deemed a termination of the Contract.
- 14.2 Should the Contractor be adjudged bankrupt or be liquidated or become insolvent, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, UNIDO may, without prejudice to any other right or remedy it may have under the terms of the Contract, terminate the Contract forthwith by giving the Contractor written notice of such termination. The Contractor shall immediately inform UNIDO of the occurrence of any of the above events.
- 14.3 UNIDO may, for the breach of the essential terms of the Contract as specified in Article 24, terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

## 15 **NON-WAIVER OF RIGHTS**

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

## 16 **NON-EXCLUSIVITY**

Unless otherwise specified in the Contract, UNIDO shall have no obligation to purchase any minimum quantities of Goods or services from the Contractor and UNIDO shall have no limitation on its right to obtain goods or services described in the Contract, from any other source at any time.

## 17 **SETTLEMENT OF DISPUTES**

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

17.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The place of the arbitration shall be Vienna, Austria. The language of the arbitration shall be English. The decisions of the arbitral tribunal shall be based on general principles of international commercial law to the exclusion of any single national system of law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to article 26 ("Interim measures") and article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the Secured Overnight Financing Rate (SOFR) of the United States Federal Reserve Bank of New York then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

## **18 PRIVILEGES AND IMMUNITIES**

Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of UNIDO.

## **19 TAX EXEMPTION**

19.1 In accordance with Section 7 of the Convention on the Privileges and Immunities of the United Nations and Section 9 of the Convention on the Privileges and Immunities of Specialized Agencies, which are applicable to UNIDO by virtue of article 21 of its Constitution, UNIDO is exempt from all direct taxes, except charges for public utility services, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for its official use. The Contractor shall collaborate with UNIDO on a best-effort basis in order to achieve tax exemption in the relevant country. UNIDO will provide a certificate of exemption upon request. In the event any governmental authority refuses to recognize the exemption of UNIDO from such taxes, restrictions, duties or charges, the Contractor shall immediately consult with UNIDO to determine a mutually acceptable procedure.

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

19.3 UNIDO is exempted from Value Added Tax (VAT) in the territory of the European Union (EU) in accordance with EU Directive 2006/112/EC, article 151 (1) (b), as amended by EU Council

Directive 2009/162/EU. Contractors located in EU countries shall not include VAT in the invoices to UNIDO. VAT will not be paid by UNIDO to EU Contractors. Only Contractors located in Austria will be paid the net amount plus VAT. Contractors should refer on the invoice to the above EU Directive or to the relevant VAT law applicable in the Contractor's country.

19.4 UNIDO will provide a letter of exemption only upon request.

## **20 CONTRACT AMENDMENT**

No modification of or change in the Contract, or waiver of any of its provisions, or additional contractual relationship with the Contractor shall be valid unless approved in the form of a written amendment to the Contract, signed by the authorized representatives of the Contractor and UNIDO.

## **21 AUDITS AND INVESTIGATIONS**

21.1 The Contractor acknowledges that UNIDO is required to fulfill its fiduciary obligations and reporting requirements to its funding partners and agrees to cooperate with UNIDO to give full effect to such obligations and requirements.

21.2 The Contractor shall keep and maintain accurate and systematic accounts and records related to the Contract for a period of seven (7) years following the expiration or prior termination of the Contract.

21.3 UNIDO may conduct audits and investigations, which shall be understood, for purposes of this Article, as including evaluations, examinations or inspections, relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract. UNIDO's rights under this Article shall not lapse upon expiration or prior termination of the Contract.

21.4 The Contractor shall provide its full and timely cooperation with any such audits and investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its Personnel and any relevant documentation and information for such purposes, at reasonable times and on reasonable conditions, and to grant UNIDO access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's Personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any audits and investigations carried out by or on behalf of UNIDO.

21.5 UNIDO shall be entitled to a refund from the Contractor for any amounts shown by such audits and investigations to have been paid by UNIDO other than in accordance with the terms and conditions of the Contract and, in addition, for the associated costs of conducting such audits and investigations, if the allegations of improper use of funds have been found to be substantially correct.

## **22 LIMITATIONS ON EMPLOYMENT**

The Contractor acknowledges that former UNIDO personnel may be subject to after-service employment restrictions and agrees to respect the terms of such restrictions.

## **23 LIMITATION ON ACTIONS**

23.1 Except with respect to any indemnification in Article 6 above, or as are otherwise set forth in the Contract, any arbitration proceedings in accordance with Article 17 above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.

23.2 The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

## **24 ESSENTIAL TERMS**

The Contractor acknowledges and agrees that each of the provisions in Articles 25 “Source of Instructions”, 26 “Conflict of Interest/Officials not to Benefit”, 27 “Fraud and Corruption”, 28 “Observance of the Law”, 29 “Forced Labor”, 30 “Child Labor”, 31 “Mines, Bombs and other Weapons”, 32 “Prevention of Harassment, Sexual Harassment, Sexual Exploitation and Sexual Abuse”, 33 “Terrorism”, 34 “Money Laundering”, and 35 “Disclosure of Sanctions or Temporary Suspension”, constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle UNIDO to terminate the Contract or any other contract with UNIDO immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

## **25 SOURCE OF INSTRUCTIONS**

The Contractor shall neither seek nor accept instructions from any authority external to UNIDO in connection with the performance of its obligations under the Contract. Should any authority external to UNIDO seek to impose any instructions concerning or restrictions on the Contractor’s performance under the Contract, the Contractor shall promptly notify UNIDO and provide all reasonable assistance required by UNIDO. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of UNIDO, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNIDO.

## **26 CONFLICT OF INTEREST/OFFICIALS NOT TO BENEFIT**

26.1 The Contractor shall disclose to UNIDO any situation that may appear as a conflict of interest, and it shall disclose to UNIDO if any UNIDO official or professional under contract with UNIDO may have an interest of any kind in the Contractor’s business or any kind of economic

ties with the Contractor. A conflict of interest is a situation in which a Party has interests that could improperly influence that Party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations, and that such conflict of interest may contribute to or constitute a fraud and corruption under these GCC. Within the purpose of the Contract, the Contractor shall ensure that neither it nor any of its affiliates, Personnel, subcontractors or agents shall be engaged with UNIDO under individual employment contracts, unless otherwise agreed by the Parties.

26.2 The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of UNIDO any direct or indirect benefit arising from or related to the award or performance of the Contract or of any other contract with UNIDO or for any other purpose intended to gain an advantage for the Contractor. The Contractor agrees that breach of this provision may lead, at UNIDO's sole discretion, to the annulment of the Contract irrespective of any work performed. The annulment shall exclude any right of the Contractor to claim any payment, even for work already performed. All delivered goods, whether used or not, will be returned at the Contractor's expense. The annulment will be without prejudice to any further remedies that UNIDO may be entitled to under the Contract or at law, with particular reference to refund of payments already made, claims for damages and losses occurred, and fraud and corruption. The Contractor shall take all reasonable measures to ensure that the provisions under this Article shall also apply with respect to the Contractor's parent entities (if any), subsidiary or affiliated entities (if any), its Personnel and sub-contractors.

## **27 FRAUD AND CORRUPTION**

27.1 Fraud and corruption are strictly prohibited. For the purpose of the Contract, "fraud and corruption" encompasses corrupt, fraudulent, collusive, coercive, or obstructive practices, which are defined as follows:

27.1.1 "Corrupt practice" means the offering, giving, receiving or soliciting, directly or indirectly, of anything of value, whether tangible or intangible, to improperly influence the actions of another party, including but not limited to extortion, fraud, and bribery;

27.1.2 "Fraudulent practice" means any act or omission, including misrepresentation, which knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial and/or other benefit and/or to avoid an obligation;

27.1.3 "Collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

27.1.4 "Coercive practice" means any act impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of the party;

27.1.5 "Obstructive practice" means acts or omissions intended to materially impede the exercise of contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to an investigation into allegations of fraud and corruption.

27.2 The Contractor, its parent entities (if any), subsidiary or affiliated entities (if any), its Personnel, and sub-contractors, shall observe the highest standard of moral and ethical conduct and shall respect the local laws. The Contractor shall report to UNIDO any credible acts of fraud and corruption arising from or relating to the Contract without delay.

27.3 UNIDO, without prejudice to any other rights or remedies it may possess, may terminate the Contract forthwith if the Contractor, in the judgment of UNIDO, has engaged in fraud and corruption during the selection process or in negotiating or executing the Contract.

## **28 OBSERVANCE OF THE LAW**

The Contractor shall comply with all relevant and applicable laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract, including, but not limited to, laws, ordinances, rules, and regulations relating to health, the environment, human rights and labor, and it shall take all reasonable measures to ensure the same from its parent entities (if any), subsidiary or affiliated entities (if any), its Personnel and sub-contractors.

## **29 FORCED LABOR**

29.1 The Contractor shall:

29.1.1 respect the prohibition of forced or compulsory labor in all its forms;

29.1.2 respect the freely exercised right of workers, without distinction, to organize, to further and to defend their interest, as well as the protection of those workers who exercise their right to organize;

29.1.3 ensure equality of opportunity and treatment in respect of employment and occupation; and;

29.1.4 ensure fair and reasonable conditions of safety, health and welfare.

29.2 The Contractor shall take all reasonable measures to ensure the same from its parent entities (if any), subsidiary or affiliated entities (if any), its Personnel and sub-contractors.

## **30 CHILD LABOR**

The Contractor represents and warrants that neither it, its Personnel, parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including article 32 thereof, which, inter alia, requires that a child shall be protected from performing any work that is likely to be exploitative, hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development. Children under the age of eighteen (18) shall not be employed in hazardous work.

## **31 MINES, BOMBS AND OTHER WEAPONS**

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

### **32 PREVENTION OF HARASSMENT, SEXUAL HARASSMENT, SEXUAL EXPLOITATION AND SEXUAL ABUSE**

- 32.1 The Contractor, its parent entities (if any), subsidiary or affiliated entities (if any), its Personnel and sub-contractors, shall take all appropriate measures to prevent sexual exploitation or abuse and all forms of harassment, including sexual harassment, of anyone by its employees or any other persons engaged and controlled by the Contractor to provide any Goods and/or perform services under the Contract. UNIDO expects the Contractor to have zero tolerance for any action which constitutes harassment, sexual harassment, sexual exploitation or sexual abuse.
- 32.2 “Harassment” means any form of treatment or behavior by an individual or group of individuals in the workplace or in connection with work, which can reasonably be seen as creating a demeaning, intimidating, hostile or abusive working environment.
- 32.3 “Sexual harassment” means any conduct or behavior of a sexual nature in the workplace or in connection with work, which is unwelcome and offensive and which can reasonably be seen as creating an offensive, intimidating, hostile or humiliating working environment. Sexual harassment may occur between persons of the opposite sex or the same sex. It may be a single incident or a series of events.
- 32.4 “Sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another.
- 32.5 “Sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions.
- 32.6 Sexual activity with children (persons under the age of eighteen), regardless of the age of majority or age of consent locally, and mistaken belief regarding the age of a child, will constitute sexual exploitation and/or abuse of such person. UNIDO shall not apply the foregoing standard relating to age in any case in which the Contractor’s Personnel or any other person who may be engaged by the Contractor to provide any Goods and perform related services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor’s Personnel or such other person who may be engaged by the Contractor to provide any Goods and perform related services, under the Contract.
- 32.7 The Contractor shall inform UNIDO as soon as it becomes aware of any credible incident or report alleging harassment, sexual harassment, sexual exploitation or sexual abuse by any person engaged in the context of the provision of Goods, and related services, under the Contract including sub-contractors.

### **33 TERRORISM**

The financing of terrorism is strictly prohibited. The Contractor agrees to undertake all reasonable efforts to ensure that none of the funds received from UNIDO under the Contract are used, directly or indirectly, to finance or provide support or assistance to individuals or entities that are (i) associated with terrorism, as included in the list maintained by the United Nations Security Council Committee established pursuant to Resolutions 1267 (1999), 1989 (2011) and 2253 (2015); or (ii) the subject of sanctions or other enforcement measures pursuant to sanctions

regimes established by the United Nations Security Council. Information concerning Security Council sanctions can be accessed via <https://www.un.org/securitycouncil/>. The Contractor shall inform UNIDO without delay of any credible allegations that funds received from UNIDO under the Contract have been used in contravention of this Article. The terms of this Article must be included in all sub contracts or agreements entered into for delivery of the Goods under the Contract.

#### **34 MONEY LAUNDERING**

34.1 Money laundering in all its forms is strictly prohibited. The Contractor agrees to undertake all reasonable efforts to ensure that none of the funds received from UNIDO under the Contract are used, directly or indirectly, to finance or provide support or assistance to individuals or entities associated with money laundering. The Contractor shall inform UNIDO without delay of any credible allegations that funds received from UNIDO under the Contract have been used in contravention of this Article. The terms of this Article must be included in all sub-contracts or agreements entered into for delivery of the Goods under the Contract.

34.2 For the purpose of this Contract, “money laundering” refers to the following criminal offences when committed intentionally, as set forth in article 6 of the United Nations Convention against Transnational Organized Crime:

- (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her actions;
- (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing such property is the proceeds of crime;
- (iii) The acquisition, possession or use of property, knowing at the time of receipt that such property is the proceeds of crime; or
- (iv) The participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this Article.

#### **35 DISCLOSURE OF SANCTIONS OR TEMPORARY SUSPENSION**

The Contractor is required to disclose to UNIDO whether it or any of its affiliates or agents is, or during the execution of the Contract becomes, subject to any sanction, suspension, debarment or ineligibility designation by any international, intergovernmental, or UN organization or national authority.

#### **36 ENVIRONMENTAL AND SOCIAL SAFEGUARDS**

The Contractor, its parent entities (if any), subsidiary or affiliated entities (if any), and its Personnel, including sub-contractors, shall place priority on environmental and social sustainability, which is fundamental to the achievement of development outcomes. In doing so and if specified in the Terms of Reference, the Contractor shall execute the Contract in line with

the applicable UNIDO policy on Environmental and Social Safeguards and in compliance with relevant international and national legislation. Opportunities to strengthen the environmental and social sustainability of interventions and activities need to be identified and realized. A precautionary approach shall be applied, and potential adverse impacts and risks need to be avoided or minimized if possible, mitigated if not, and offset, as appropriate.

**37 NON-DISCRIMINATION**

The Contractor shall take all appropriate measures to ensure that neither it, its parent entities (if any), subsidiary or affiliated entities (if any), nor its Personnel, including sub-contractors, is engaged in any employment practices, including those relating to recruitment, promotion, training, remuneration and benefits, which discriminate on the basis of gender, religion, disability, ethnicity, or national origin.

**38 SEVERABILITY**

If any provision or condition of the Contract is or becomes prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provision and condition of the Contract.

**39 ENTRY INTO FORCE AND DURATION**

The Contract shall enter into force upon the date of the last signature by the duly authorized representatives of the Parties, and shall remain in force until satisfactory fulfillment of all contractual terms and conditions unless terminated earlier pursuant to the terms of the Contract.

**40 SURVIVAL**

The obligations set forth in Articles 6 “Indemnification”, 11 “Use of UNIDO Name, Emblem or Official Seal of UNIDO”, 12 “Confidential Nature of Documents and Information”, 17 “Settlement of Disputes”, 18 “Privileges and Immunities”, 21 “Audits and Investigations”, 26 “Conflict of Interest/Officials not to Benefit”, and 27 “Fraud and Corruption” shall survive the completion, expiration or termination of the Contract.