

**UNITED NATIONS CHILDREN'S FUND (UNICEF)**

wishes to enter into a contract for engineering services  
with

**NAME OF VENDOR**

for the provision of the following engineering services

**DESCRIPTION OF THE SERVICES**

as stipulated in the attached agreement

This **FORM OF AGREEMENT** is dated \_\_\_\_\_ [INSERT DATE]

## **PARTIES:**

1. UNICEF, THE UNITED NATIONS CHILDREN'S FUND, an international inter-governmental organization established by the General Assembly of the United Nations by resolution No. 57(1) of 11 December 1946 as a subsidiary organ of the United Nations, having its headquarters at UNICEF House, Three United Nations Plaza, New York, New York, 10017, U.S.A. ("UNICEF"); and
2. \_\_\_\_\_ [COMPANY] incorporated and registered in \_\_\_\_\_ [COUNTRY] with company number \_\_\_\_\_ [REGISTERED NUMBER] whose registered office is at \_\_\_\_\_ [REGISTERED ADDRESS] (the "Consultant"),

("the Parties").

## **BACKGROUND:**

- A. UNICEF, in accordance with its Charter and Mission Statement, works with governments, civil society organizations and other partners in more than one hundred and sixty countries to advance children's rights to survival, protection, development and participation, and in doing so is guided by the Convention on the Rights of the Child.
- B. [The Government of \_\_\_\_\_ [E.G. INDONESIA], through the Departments of \_\_\_\_\_ [E.G. NATIONAL EDUCATION], has agreed to a programme to provide for \_\_\_\_\_ [E.G. PRIMARY SCHOOLS IN THE PROVINCE OF ACEH (NAD)] ("the Project").]  
OR  
[UNICEF \_\_\_\_\_ [NAME OF COUNTRY OFFICE – E.G. INDONESIA COUNTRY OFFICE] has been granted approval to \_\_\_\_\_ [E.G. CONSTRUCT A NEW OFFICE PREMISES/ GUESTHOUSE/ WAREHOUSE] in \_\_\_\_\_ [NAME OF DUTY STATION – E.G. THE PROVINCE OF ACEH (NAD)] ("the Project").]
- C. In Request for Proposals No. \_\_\_\_\_ ([NUMBER]) dated \_\_\_\_\_ [DATE], as amended by \_\_\_\_\_ [LIST AMENDMENTS AND DATES] (together the "Request for Proposals"), a copy of which is attached to this Contract, UNICEF invited bids for provision of the design of the Project and the direct site supervision of the Project as more particularly detailed in this Contract ("Services").
- D. By a bid dated \_\_\_\_\_ [DATE], as amended by [LIST OF AMENDMENTS AND DATE], a copy of which is attached to this Contract, the Consultant responded to the Request for Proposals and represented that it is qualified, capable and wiling to carry out the Services as described.
- E. UNICEF wishes to engage the Consultant to undertake the Services on the terms and conditions set forth in this Contract and the Consultant represents that it is qualified, ready, able and willing to carry out the Services on the same terms and conditions.

## **AGREED TERMS:**

### **1 DEFINED TERMS**

Save where the context otherwise requires, the terms with capitalised initials in this Form of Agreement shall have the same meaning as the defined terms with capitalised initials in the General Terms and Conditions (Engineering Services) at Annex 3.

### **2 AGREEMENT**

This contract is comprised of the following documents:

- (i) This Form of Agreement;
- (ii) Particular Conditions at Annex 1;
- (iii) Special Conditions at Annex 2;

- (iv) General Terms and Conditions (Engineering Services) at Annex 3;
  - (v) Appendix 1 – Services and Deliverables;
  - (vi) The following Appendices:
    - (1) Appendix 2 – Advance Payment Guarantee;
    - (2) Appendix 3 - Schedule of Payments;
    - (3) Appendix 4 – Request for Proposals;
    - (4) Appendix 5 – Bid; and
  - (vii) Any other contract documents,
- (“the Contract”).

### 3 **PRIORITY**

In the event of any ambiguity, conflict or inconsistency arising within or between the documents forming part of the Contract, the order of priority shall be the order in which the documents are listed in clause 2.

### 4 **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between UNICEF and the Consultant in connection with the Services and the Deliverables.

### 5 **PAYMENT**

It is agreed and acknowledged that valid execution of this Form of Agreement by UNICEF and the Consultant is a condition precedent to any sums becoming due and payable to the Consultant under and in connection with this Contract and UNICEF shall have no obligation to pay the Consultant any sums under or in connection with this Contract until this Form of Agreement has been validly executed by the Consultant and UNICEF.

**SIGNED**  
for and on behalf of  
**UNICEF**

Signature:

Print:

Date:

**SIGNED**  
for and on behalf of  
**UNICEF**

Signature:

Print:

Date:

**SIGNED**  
for and on behalf of  
**[CONSULTANT]**  
Signature:

Print:

Date:

ANNEX 1 - PARTICULAR CONDITIONS

<b>Item</b>	<b>Clause</b>	<b>Entry</b>
Beneficiary	1.1.2	[State “local beneficiary” Works are to be handed to] _____
Completion Date	1.1.3	[State Calendar Date)] _____
Key Personnel	1.1.17	[Name and Position of Key Personnel] _____
Milestones	1.1.18	[State condition required to be met and date] _____
Price	1.1.22	[Total fee payable in Schedule of Payments] _____
Site	1.1.27	[Site Address] _____
Form of Electronic Communication	1.3(a)	[Email] OR [Does not apply] _____
Address for Communications: UNICEF	1.3(b)	[Address] _____ _____
Address for Communications: Consultant	1.3(b)	[Address] _____ _____
Language for communications	1.4	[Language] _____
Inspection Period	2.3	[State period to inspect following provision of a report or deliverable] _____
Consultant’s Representative	3.4	[Name and position] _____
Contract for Works	4.1	Clauses 4.2-4.6 [Apply] OR [Do not apply] _____
Frequency of periodic joint inspection	4.2	[Frequency e.g. monthly] OR [Does not apply] _____ _____
Operation, Maintenance and Testing	4.7	[Applies] OR [Does not apply] _____
Liquidated Damages: Amount	5.5	[X] % of the Price per day of delay

Liquidated Damages: Limit	5.5	[X] % of the Price
Advance Payment: Amount	8.3	[[10]% of Price] OR [Does not apply]
Advance Payment: Repayment	8.3	[Repayment arrangements, e.g. a percentage of invoices or lump sum payments] OR [Does not apply]
Currency	8.7	[Local Currency]
Insurance for damage to property and death and personal injury	9.1(a)(i)	[required limit of indemnity]
Professional Indemnity Insurance	9.1(a)(iii)	[required limit of indemnity]

ANNEX 2- SPECIAL CONDITIONS

[Set out any Project specific amendments to General Conditions (Engineering Services)]

ANNEX 3- GENERAL TERMS AND CONDITIONS (ENGINEERING SERVICES)

## 1. GENERAL PROVISIONS

### 1.1 Defined Terms

In these General Terms and Conditions (Engineering Services) (“General Conditions”), save where the context otherwise requires, the following terms have the following meaning:

- 1.1.1 “Affiliates” means any of the Consultant’s corporate affiliates or associates, including parent entities, subsidiaries, and other entities in which the Consultant owns a substantial interest.
- 1.1.2 “Beneficiary” means as stated in the Particular Conditions.
- 1.1.3 “Completion Date” means the date specified in the Particular Conditions, as may be extended in accordance with this Contract.
- 1.1.4 “Confidential Information” means the Contract Materials, all information and documents in relation to this Contract, the Works, the Contract for Works and/or the Project received by the Consultant under or in connection with this Contract and/or the UNICEF Data.
- 1.1.5 “Contract” means as defined in the Form of Agreement.
- 1.1.6 “Contract for Works” means the contract between UNICEF and the Contractor for the provision of the Works.
- 1.1.7 “Contract Materials” means all maps, drawings, models, photographs, plans, reports, recommendations, estimates, documents, information and/or other data prepared and/or provided by or contributed to by the Consultant under or in connection with this Contract, including without limitation the Deliverables and whether prepared before or after the date of this Contract.
- 1.1.8 “Contractor” means the contractor appointed to provide the Works.
- 1.1.9 “Consultant” means as defined in the Form of Agreement.
- 1.1.10 “Deliverables” means the work product and other output of the Services required to be delivered by the Consultant as part of the Services, as specified in Appendix 1.
- 1.1.11 “Disabling Code” means any virus, back door, timer or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code that may have the consequence (whether by design or unintentionally) of disrupting, disabling, harming, circumventing security controls or otherwise impeding in any manner the normal operation or performance of (i) any software or service or (ii) any UNICEF information system or network.
- 1.1.12 “End User” means, in the event that the Services or Deliverables involve the use of any information systems, any and all UNICEF employees, consultants and other personnel and any other external users collaborating with UNICEF, in each case, authorized by UNICEF to access and use the Services and/or Deliverables.
- 1.1.13 “Final Completion” means that all defects and incomplete work for which the Contractor is responsible under the Contract for Works that have become apparent prior to the expiry of the latest defects liability period have been remedied and completed by the Contractor and UNICEF considers the Works to be satisfactory and in accordance to the Contract for Works.
- 1.1.14 “Force Majeure” means any unforeseeable and unavoidable event arising as a result of causes beyond the control of the Parties, including acts of nature, pandemics, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism or other acts of a similar nature or force, and excluding without limitation (a) any event which is caused by the negligence or intentional action of a Party; (b) 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; (c) the insufficiency of funds, inability to make any payment required under the Contract, or any economic conditions, including but not limited to inflation, price escalations, or labour availability; (d) any event resulting from harsh conditions or logistical challenges for the Consultant (including civil unrest) associated with locations at which UNICEF is operating or is about to operate or is withdrawing from; and/or (e) any event resulting from UNICEF’s humanitarian and/or emergency operations or similar operations.
- 1.1.15 “Form of Agreement” means the form of agreement to which these General Conditions are attached.



- 1.1.16 “Host Government” means any government with which UNICEF has a programme of development cooperation, and includes any government of a country in which UNICEF provides humanitarian assistance.
- 1.1.17 “Key Personnel” means as stated in the Particular Conditions and (i) Personnel identified in the proposal as key individuals (as a minimum, partners, managers, senior auditors) to be assigned for participation in the performance of the Contract; (ii) Personnel whose resumes were submitted with the proposal; and/or (iii) individuals who are designated as key personnel by agreement of the Consultant and UNICEF during negotiations.
- 1.1.18 “Milestones” means the dates and the conditions to be met by each date stated in the Particular Conditions as may be extended in accordance with this Contract.
- 1.1.19 “Parties” means as defined in the Form of Agreement.
- 1.1.20 “Personnel” means the Consultant’s officials, directors, employees, agents, sub-consultants, sub-contractors and/or other representatives.
- 1.1.21 “Policies” means the policies available on the UNICEF Supply Website from time to time, including without limitation the following:
- (i) UNICEF’s Policy Prohibiting and Combatting Fraud and Corruption;
  - (ii) UNICEF’s Policy on Conduct Promoting the Protection and Safeguarding of Children;
  - (iii) UNICEF’s Children’s Rights and Business Principles Policy;
  - (iv) the UN Supplier Code of Conduct; and
  - (v) UNICEF’s Information Disclosure Policy.
- 1.1.22 “Price” means as stated in the Particular Conditions and any additional sums payable to the Consultant in accordance with clause 6.1.
- 1.1.23 “Project” means as defined in the Form of Agreement.
- 1.1.24 “Schedule of Payments” means Appendix 3 to the Form of Agreement.
- 1.1.25 “Security Incident” means, with respect to any information system, service or network used in the delivery of the Services or Deliverables, one or more events that (a) indicates that the security of such information system, service, or network may have been breached or compromised and (b) could very likely compromise the security of UNICEF’s Confidential Information or weaken or impair UNICEF’s operations. Security Incident includes any actual, threatened or reasonably suspected unauthorized access to, disclosure of, use of or acquisition of UNICEF Data that compromises the security, confidentiality, or integrity of the UNICEF Data, or the ability of UNICEF, the Beneficiary and/or End Users to access the UNICEF Data.
- 1.1.26 “Services” means the services set out in Appendix 1 and any services reasonably incidental to those services.
- 1.1.27 “Site” means the site(s) at which the Works are to be carried out including without limitation the site identified in the Particular Conditions and such other site notified by UNICEF to the Consultant from time to time.
- 1.1.28 “Substantial Completion” means that the Works have been completed in accordance with the Contract for Works, are free from defects for which the Contractor is responsible, and can be effectively used for the purpose for which they are intended, and that UNICEF considers that the Works are satisfactory and are in accordance with the Contract for Works.
- 1.1.29 “Technical Inspection” means an inspection of the Works to identify any outstanding defects and incomplete works, carried out in the presence of UNICEF (at UNICEF’s discretion), the Contractor and (if UNICEF notifies the Consultant that their attendance is required) representatives of the Beneficiary and/or the Host Government.
- 1.1.30 “UNICEF Data” means any and all information or data processed and/or held in digital form that (a) is provided to the Consultant by, or on behalf of UNICEF and/or End Users under the Contract or through UNICEF’s, the Beneficiary’s and/or End Users’ use of the Services or in connection with the Services, or (b) is collected by the Consultant in the performance of the Contract.
- 1.1.31 “UNICEF Supply Website” means UNICEF’s public access webpage for suppliers available at [https://www.unicef.org/supply/index\\_procurement\\_policies.html](https://www.unicef.org/supply/index_procurement_policies.html), as may be updated from time to time and any other webpage notified by UNICEF to the Consultant from time to time.
- 1.1.32 “Unusual Commercial Expenses” means commissions not mentioned in the Contract and/or not stemming from a properly concluded contract referring to the Contract, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven and/or commissions paid

to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.

1.1.33 “Works” means the works forming part of the Project as may be defined in the Contract for Works.

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## 1.2 Period of days

In this Contract “day” means a calendar day, provided that where under this Contract an act is required to be done within a specified period of days, any public holiday in the country in which the Project is located shall be excluded when calculating the specified period.

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## 1.3 Notices and Other Communications

Any notice, approval, certificate, consent, determination or other communication under this Contract shall be:

- (a) in writing and delivered by hand (against receipt), sent by mail or courier or transmitted using any agreed form of electronic communication stated in the Particular Conditions; and
- (b) delivered, sent or transmitted to the address for the recipient’s communications stated in the Particular Conditions or such other address as notified by the recipient in writing.

The Consultant shall reply to any communication under or in connection with this Contract and/or the Contract for Works within five (5) days of receipt of the communication save to the extent otherwise specified in the Contract for Works and provided that the Consultant shall reply within one (1) day in the event of any emergency and/or health and safety issue. Any instructions issued to the Contractor by the Consultant shall be in writing and copied to UNICEF.

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## 1.4 Language

The ruling language of this Contract is English. If this Contract is translated into another language, and there is any ambiguity, inconsistency or conflict in or between the version of this Contract in the English language and any version in a different language, the version of this Contract in the English language shall take precedence. All communications under and in connection with this Contract shall be in the language stated in the Particular Conditions.

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## 1.5 Interpretation

In this Contract save where the context otherwise requires:

- (a) words indicating the singular also include the plural and words indicating the plural include the singular; and
  - (b) clauses are included for convenience only and shall not affect the interpretation of this Contract.
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## 1.6 Sub-Contracting

The Consultant shall not subcontract the whole or any part of the Services without UNICEF’s prior written consent. The Consultant shall be fully responsible and liable for i) all Services performed by and ii) any act, omission, default or breach of this Contract of, its sub-contractors and/or any other Personnel. The Consultant shall ensure that the terms of any sub-contract are consistent with this Contract and require the sub-contractor to comply with the Consultant’s obligations under or in connection with this Contract.

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## 1.7 Waiver

No waiver of any right or remedy under this Contract or by law shall be effective unless it is given expressly in writing. No i) failure or delay by UNICEF to object and/or exercise any right and/or remedy under or in connection with this Contract, ii) single or partial exercise of any right or remedy, and/or iii) act or omission of UNICEF in connection with this Contract, shall constitute a waiver of any of UNICEF's rights and/or remedies under or in connection with this Contract and/or prevent or restrict any further exercise of any right or remedy.

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## 1.8 Collaboration and Good Faith

The Parties shall act in the spirit of good faith in performing their obligations under and in connection with this Contract, in co-operation and co-ordination with each other, the Contractor, the Beneficiary, the Host Government in the country where the Project is located and any other third parties involved in the Project.

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## 2. UNICEF

### 2.1 Assistance

UNICEF shall supply the Consultant when requested with any information and/or documentation at its disposal which may be relevant to the performance of the Services. Except as expressly set out in this Contract, UNICEF shall have no obligation to provide any assistance to the Consultant and UNICEF makes no representations as to the availability of any facilities, equipment, materials, systems or licenses which may be helpful or useful for the fulfilment by the Consultant of its obligations under the Contract.

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### 2.2 Access to the Site

To the extent UNICEF is able to do so, UNICEF shall give the Consultant reasonable access and to, and use of the Site to the extent necessary to enable the Consultant to perform the Services. If UNICEF provides access to and use of the Site to the Consultant for the purposes of the Contract, the Consultant shall ensure that the Personnel shall, at all times (a) use such access exclusively for the specific purpose for which the access has been granted and (b) comply with UNICEF's security and other regulations and instructions for such access and use. The Consultant shall ensure that only those of the Personnel that have been authorized by the Consultant, and approved by UNICEF, have access to the Site. UNICEF reserves the right to instruct any change to the location of the Site and/or of the location in which the Consultant shall provide the Services.

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### 2.3 Inspection and Acceptance

UNICEF shall have the period of time stated in the Particular Conditions (or if no such period is stated, a reasonable time) after completion of the Services and/or provision of any report or Deliverable, to inspect the Services, report and/or Deliverable and to accept or reject any Services, report and/or Deliverable which does not comply with the Contract to UNICEF's satisfaction. No inspection, approval, acceptance and/or rejection shall i) relieve or limit the Consultant's obligations or liabilities under or in connection with this Contract and/or ii) prejudice UNICEF's rights and obligations under or in connection with this Contract. No sums paid under or in connection with this Contract shall constitute acceptance of the Services, any report or Deliverable. UNICEF shall be entitled, at its discretion, to withhold, retain and/or deduct any sums claimed by the Consultant in respect of any Services, reports and/or Deliverables which have been rejected and/or require payment of any sums paid by UNICEF in respect of any rejected Services, reports and/or Deliverables as a debt.

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### 3. CONSULTANT'S OBLIGATIONS

#### 3.1 Scope of Services

The Consultant shall provide the Services and deliver the Deliverables in accordance with the Contract and to UNICEF's satisfaction. Except as expressly provided in the Contract, the Consultant shall be responsible at its sole cost for providing all the necessary personnel, equipment, material and supplies and for making all arrangements necessary for the performance and completion of the Services and delivery of the Deliverables in accordance with the Contract.

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#### 3.2 Standard of Care

The Consultant shall exercise all the reasonable skill and care to be expected from a consultant with experience of provide services of a similar nature and complexity to the Services and in conformity with sound professional, administrative and financial practices. The Consultant shall provide the Services with involvement of the local community and in a cost-effective manner.

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#### 3.3 Laws and Standards

The Consultant shall provide the Services in accordance with and shall ensure that the design of the Project complies with all professional standards, codes and specifications applicable to the Services and/or the Project which an experienced consultant would be expected to comply with, including without limitation any standards, codes and specifications referred to in Appendix 1, Appendix 4 and/or Appendix 5. The Consultant shall comply with (and shall not cause the Beneficiary and/or UNICEF to breach) all applicable laws, ordinances, rules, and regulations.

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#### 3.4 Consultant's Personnel

At any time during the term of the Contract, UNICEF can make a written request that the Consultant replace one or more of the Personnel. UNICEF shall not be required to give an explanation or justification for this request. Within seven (7) days of receiving UNICEF's request for replacement the Consultant must replace the Personnel in question with Personnel UNICEF has accepted in writing. The qualifications of any replacement Personnel shall be substantially the same as, or better than those of the Personnel they are replacing.

The Consultant shall not replace the Key Personnel or remove the Key Personnel from the performance of the Services without UNICEF's prior written consent. If one or more of the Key Personnel become unavailable, for any reason, for the delivery of the Services, the Consultant shall notify UNICEF at least fourteen (14) days in advance. In notifying UNICEF, the Consultant shall provide an explanation of the circumstances necessitating the proposed replacement(s) and submit justification and qualification of replacement Key Personnel in sufficient detail to permit evaluation of the impact on the engagement.

The Consultant has appointed a representative ("the Consultant's Representative") who has the Consultant's full authority in respect of all matters connected with this Contract. The Consultant's Representative is named in the Particular Conditions. The Consultant's Representative shall not be changed without the prior written approval of UNICEF. The Consultant's Representative shall have the responsibility to co-ordinate the effort of the Parties and has the Consultant's full authority in respect of all matters connected with this Contract.

Without prejudice to the Consultant's obligations under this Contract, UNICEF shall be entitled to withhold all sums due under or in connection with this Contract and/or instruct the Contractor to suspend performance of all or any part of the Works in accordance with clause 7.1 if the Key Personnel and/or the Consultant's Representative

cease to be involved in the provision of the Services and suitable replacements have not been proposed by the Consultant and approved by UNICEF.

The Personnel, including individual sub-contractors, shall not be considered in any respect as being the employees or agents of UNICEF. All expenses of the withdrawal or replacement of the Consultant's Personnel shall, in all cases, be borne exclusively by the Consultant.

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### **3.5 Employment Law and Health and Safety**

The Consultant shall comply with all applicable international standards and labour laws, rules and regulations relating to the employment of national and international staff in connection with the Services, including, but not limited to, laws, rules and regulations associated with the payment of the employer's portions of income tax, insurance, social security, health insurance, worker's compensation, retirement funds, severance or other similar payments.

The Consultant shall be fully responsible and liable for, and shall indemnify and hold UNICEF harmless for and against (a) all payments and any other benefits due to the Personnel for their services in relation to the performance of the Contract; (b) any action, omission, negligence or misconduct of the Personnel; (c) any insurance coverage which may be necessary or desirable in respect of the Personnel for the purpose of the Contract; (d) the safety and security of the Personnel and any sub-contractors' personnel; or (e) any costs, expenses, or claims associated with any illness, injury, death or disability of the Personnel and/or any sub-contractors' personnel.

The Consultant shall ensure that the Services, the Deliverables and the design of the Project complies with all applicable health and safety requirements (including without limitation all applicable health and safety law) and accessibility requirements. The Consultant shall regularly report to UNICEF on the safety and security of the Works, the Site and/or their surroundings or access routes. The Consultant shall notify UNICEF within one (1) day in the event of any health and safety or related issues arising in connection with the Works, the Site and/or their surroundings or access routes and shall issue such instructions to the Contractor as are necessary to ensure the safety and security of the Works, Site and/or their surroundings or access routes.

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### **3.6 Intellectual Property Rights**

UNICEF shall own all intellectual property and other proprietary rights, including but not limited to patents, copyrights and trademarks in (i) the Contract Materials, and/or (ii) any materials, documents, products, processes, inventions, ideas and/or know-how produced, prepared or collected in consequence of, or during the course of, the performance of the Contract. To the extent any intellectual property and/or other proprietary rights ("Proprietary Rights) would save for this clause 3.6 vest in the Consultant, the Consultant hereby assigns ownership of the Proprietary Rights to UNICEF.

The Consultant shall take all necessary steps and execute all necessary documents to transfer the Proprietary Rights to UNICEF and generally assist in transferring the Proprietary Rights to UNICEF in compliance with the requirements of the applicable law and of the Contract. The Consultant shall indemnify and hold UNICEF harmless for and against any costs, expense, losses or liability as a result of the Contract Materials infringing any rights of any third party. The Consultant waives any rights it may have to be identified as author or attributed in respect of the Contract Materials.

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### **3.7 Records**

The Consultant shall keep full accurate and systematic records and accounts in respect of the services including without limitation as is necessary to establish that the time and the actual incidental expenditure identified in the Consultant's invoice(s) has been duly incurred in the performance of the Services.

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## 4. CONTRACT FOR WORKS

### 4.1 Application

If the Particular Conditions state that clauses 4.2-4.6 apply, the Consultant shall comply with clauses 4.2-4.6.

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### 4.2 Monitoring and Inspecting

Following commencement of the Works the Consultant shall attend Site during the course of the Works, supervise, monitor, inspect and check the Works carried out by the Contractor and keep UNICEF informed of the regular progress of the Works. The Consultant shall notify UNICEF within seven (7) days if it becomes aware or should have become aware of any circumstances which may delay and/or increase the cost of the Project and/or the Works.

The Consultant and the Contractor shall perform periodic joint inspections at the Site at the frequency stated in the Particular Conditions from the issue of the Certificate of Substantial Completion (as defined in clause 4.4) until the later of the end of the defects liability period under the Contract for Works and Final Completion to inspect any outstanding defects and/or incomplete work and the Consultant shall provide a list of defects and incomplete work (including timescales during which the Contractor is required to remedy the defects) to UNICEF and the Contractor within seven (7) days of any inspection.

UNICEF may rely fully on the Consultant's advice, inspections, reports and other Services provided under or in connection with this Contract.

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### 4.3 Construction Administration and Authority

Subject to the limitations in this clause, the Consultant shall be responsible for the administration of the Contract for Works and for performing the role of Engineer under the Contract for Works, including without limitation issuing instructions, issuing certificates and assessing and responding to the Contractor's invoices, payment applications and/or requests for an extension of time and/or additional payment. The Consultant shall consider and respond to all notices from the Contractor in relation to any potential variation, any extension of time and/or any increase in the contract price under the Contract for Works within fourteen (14) days of receipt. The Consultant shall, within ten (10) days of receipt of any invoice from the Contractor, provide UNICEF with a report advising whether the invoice should be rejected or accepted.

Notwithstanding the first paragraph of this clause 4.3, the Consultant shall not without UNICEF's prior written consent:

- (a) issue any instruction (other than in circumstances when it is necessary for the Contractor to act promptly to avoid risks to health and safety and/or damage to property), instruct or agree to any change to the scope of the Works and/or the programme for the Project, issue any assessment of any proposed variation and/or request for an extension of time and/or award the Contractor any extension of time, variation and/or adjustment to the contract price under the Contract for Works, which could or will result in an increase of the original contract price under the Contract for Works and/or delay completion of the Project;
  - (b) issue a notice to proceed;
  - (c) instruct the use of any provisional sum under the Contract for Works; and/or
  - (d) carry out any Technical Inspection and/or issue the Certificate of Substantial Completion or Final Completion.
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#### 4.4 Substantial Completion

The Consultant shall notify UNICEF when it considers that Substantial Completion may have occurred save for minor defects and incomplete work. The Consultant shall arrange and carry out a Technical Inspection within seven (7) days of an instruction from UNICEF. Within seven (7) days of any such Technical Inspection the Consultant shall issue a report to the Contractor and UNICEF identifying all remaining defects and incomplete works and the timescales within which the Contractor is required to remedy such defects and complete such incomplete work (“Defects List for Substantial Completion”).

If the Contractor fails to remedy any defects and/or complete any incomplete work in accordance with the Defects List for Substantial Completion, the Consultant shall notify UNICEF and instruct the Contractor to immediately (and within no longer than 2 days) comply with the Defects List for Substantial Completion. The Consultant shall notify UNICEF when it considers that the Contractor has remedied and completed all defects and incomplete work which the Contractor was required to remedy and complete in the Defects List for Substantial Completion.

The Consultant shall arrange and carry out within seven (7) days of an instruction from UNICEF a further Technical Inspection to determine whether or not a certificate of Substantial Completion under the Contract for Works (the "Certificate of Substantial Completion") should be issued. UNICEF, or if instructed by UNICEF in writing, the Consultant, shall issue the Certificate of Substantial Completion when UNICEF considers that Substantial Completion has occurred.

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#### 4.5 Handover

Following Substantial Completion or at such other time as requested by UNICEF and/or the Beneficiary, the Consultant shall assist and facilitate the handing over of the Works to the Beneficiary and shall provide (or shall ensure that the Contractor provides) any other documents as are required to enable the Beneficiary to occupy and use the Works, including without limitation, any Contract Materials, design drawings, as-built drawings, shop drawings, the health and safety file and operation and maintenance manual and documents.

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#### 4.6 Final Completion

At the end of the Defects Liability Period, if instructed to do so by UNICEF, the Consultant shall arrange and carry out a Technical Inspection within seven (7) days of UNICEF’s instruction. Within seven (7) days of any such Technical Inspection the Consultant shall issue a report to the Contractor and UNICEF identifying all remaining defects and incomplete works and the timescales within which the Contractor is required to remedy such defects and complete such incomplete work (“Defects List for Final Completion”).

If the Contractor fails to remedy any defects and/or complete any incomplete work in accordance with the Final Completion Report, the Consultant shall notify UNICEF and instruct the Contractor to immediately comply with the Defects List for Final Completion. The Consultant shall notify UNICEF when it considers that the Contractor has remedied and completed all defects and incomplete work which the Contractor was required to remedy and complete in the Defects List for Final Completion.

If instructed by UNICEF the Consultant shall arrange and carry out within seven (7) days of UNICEF’s instruction a further Technical Inspection to determine whether Final Completion has occurred and the certificate of Final Completion under the Contract for Works (“Certificate of Final Completion”) should be issued. UNICEF, or if instructed in writing by UNICEF, the Consultant, shall issue the Certificate of Final Completion when UNICEF considers that Final Completion has occurred.

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#### 4.7 Operation, Maintenance and Testing

If the Particular Conditions state that this clause 4.7 applies, the Consultant shall:

- (a) conduct such tests of the Project prior to Substantial Completion and/or Final Completion as specified in the Services; and
  - (b) assist with and/or supervise the operation and maintenance and testing of the Project as specified in the Services.
- 

## **5. COMMENCEMENT AND COMPLETION**

### **5.1 Agreement Effective**

This Contract shall take effect from the date of signature of the Form of Agreement (“Effective Date”) and shall apply to any obligations performed and/or Services provided prior to the Effective Date.

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### **5.2 Commencement and Completion of Services**

The Consultant shall commence the Services on the Effective Date unless otherwise agreed by UNICEF, and shall carry out and complete the Services regularly and diligently and without delay.

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### **5.3 Completion Date**

The Consultant shall achieve the Milestones and shall complete the Services to UNICEF's satisfaction by the Completion Date. If the Consultant fails to achieve any Milestone and/or fails to complete the Services by the Completion Date, the Consultant shall (without being entitled to any additional payment or an increase in the Price) accelerate the Services so as to achieve the Milestone and/or complete the Services (as applicable) as soon as possible. This Contract shall continue to be valid and effective notwithstanding i) any extension of time to any Milestone and/or the Completion Date in accordance with this Contract and/or ii) any failure by the Consultant to achieve any Milestone and/or complete the Services by the Completion Date.

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### **5.4 Delays**

In addition to the Consultant’s rights under clause 6.1 following a Variation, the Consultant shall be entitled to a reasonable extension of time to the Milestones and/or the Completion Date as determined by UNICEF in accordance with clause 6.1, but not to any additional payment or an increase in the Price, if the Consultant is unable to achieve the Milestones or complete the Service by the Completion Date as a result of:

- (a) delay in obtaining any third party approvals, consents and/or permits required for performance of the Services and/or the Works. save to the extent the Consultant is responsible for assisting with or obtaining such approval, consent or permit under this Contract;
  - (b) Force Majeure; or
  - (c) any delay in the commencement of the Works as a result of any act or omission of the Contractor, UNICEF, the Beneficiary or the Host Government of the country in which the Project is located.
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### **5.5 Liquidated Damages**

If the Consultant fails to achieve the Milestones and/or to complete the Services to UNICEF's satisfaction by the Completion Date, UNICEF shall be entitled to deduct from any payment due to the Consultant and/or recover as a debt liquidated damages in the amount stated in the Particular Conditions. These liquidated damages shall not relieve the Consultant from any other obligations, responsibilities or liabilities under this Contract.



If the total delay damages payable in accordance with this clause 5.5 exceeds the limit on liquidated damages stated in the Particular Conditions, UNICEF may, at its discretion, on immediate notice to the Consultant:

- (a) terminate this Contract, appoint a third party to complete the Services and recover the cost of doing so as a debt; and/or
- (b) agree, without prejudice to UNICEF's rights and remedies under this Contract, that the Services will be completed by the Consultant at the Consultant's expense,

and no further sums shall be due or payable to the Consultant under this Contract.

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## 5.6 Rate of Progress of Services

If, at any time actual progress of the Services is too slow for the Consultant to comply with this Contract, UNICEF may instruct the Consultant to accelerate the Services in order to comply with this Contract. Save as provided in clause 6.1, the Consultant shall not be entitled to any additional payment as a result of any acceleration in accordance with this clause 5.6.

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## 5.7 Interim and Final Reports

All invoices must be accompanied by an interim or final report which indicates, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance of the Price available. Interim and final reports shall also include a report on the regular progress of the Services and the Works, including without limitation, the following matters in the monthly report:

- (a) any non-compliance of the Works or the Contractor with the Contract for Works;
- (b) any non-compliance of the Works or the Contractor with any applicable law, standards, codes and/or specifications and/or the Policies;
- (c) any defects in the Works;
- (d) any potential increase in the cost of the Works;
- (e) any potential delay to the completion date of the Works and/or the regular progress of the Works; and
- (f) any inconsistencies between the Works provided and the design of the Works,

("Relevant Matters").

Immediately prior to the completion of the Services, the Consultant shall draw up a final progress report which must include details of expenditure and the Relevant Matters as referred to in first paragraph of this clause 5.7 and, if appropriate, a critical study of any major problems which may have arisen during the performance of the Contract. This final progress report shall be forwarded to UNICEF not later than thirty (30) days after the completion of the Services.

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## 6. VARIATIONS TO SERVICES

### 6.1 Variations

The Consultant shall comply with all instructions from UNICEF under or in connection with this Contract, including without limitation, any instruction from UNICEF resolving any ambiguity, conflict or inconsistency in or between the documents forming part of this Contract, provided that the Consultant shall not perform any additional or varied services which may constitute or give rise to a potential Variation unless any additional fees and/or extension of time have been agreed between the Parties. In this Contract (subject to the third paragraph of this clause), the Consultant shall be entitled to a variation if it is required to carry out any additional or varied

services as a result of any instruction from UNICEF, any change in law which was unforeseeable at the Effective Date and/or any change in the location of the Site instructed by UNICEF ("Variation").

The Consultant shall as soon as possible and within fourteen (14) days of becoming aware of the circumstances giving rise to any potential extension of time as provided in clause 5.4 and/or a Variation, notify UNICEF in writing and provide sufficient detail of additional costs or delay to enable UNICEF to make a proper assessment of the extension of time and/or Variation. The Consultant shall use all reasonable endeavours to minimise the effect of any circumstances giving rise to an extension of time and/or a Variation.

Notwithstanding any other provision of this Contract, the Consultant shall not be entitled to i) any extension of time in connection with any circumstances which are concurrent with any other cause of delay for which the Consultant is not entitled to an extension of time and/or ii) any additional payment and/or an extension of time:

- (a) unless the additional payment and extension of time are agreed in writing by UNICEF before the Consultant commences performing the additional or varied services;
- (b) if the Consultant has not complied with this clause 6.1; and/or
- (c) as a result of any default, act or omission of the Consultant.

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## 6.2 Force Majeure

If either Party is permanently unable to perform its obligations under this Contract by reason of any Force Majeure, they shall give notice to the other Party within fourteen (14) days of becoming aware of the event or circumstances constituting Force Majeure and the Parties shall be released from further performance of their obligations under this Contract for so long as the Force Majeure continues. The Parties shall use all reasonable endeavours to minimize the effect of any Force Majeure and any Party affected by any Force Majeure shall give notice to the other Party within three (3) days of them ceasing to be affected by the Force Majeure.

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## 7. SUSPENSION OF SERVICES AND TERMINATION OF AGREEMENT

### 7.1 Suspension of Services

UNICEF shall be entitled to instruct the Consultant to suspend the performance of the Services and suspend UNICEF's obligations under this Contract on fourteen (14) days' notice for any reason. No further sums shall become due or payable to the Consultant under this Contract following suspension, save for any sums which become due and payable in accordance with this Contract following any notice from UNICEF to recommence the Services. During any period of suspension under this clause 7.1 the Consultant shall comply with all obligations under and in connection with this Contract other than those which have been suspended as stated in UNICEF's notice of suspension and shall without limitation maintain any advance payment guarantee and all insurances which are required to be provided by the Consultant under this Contract.

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### 7.2 Termination of Agreement

UNICEF can terminate the Contract with immediate effect upon delivery of a written notice of termination to the Consultant, without any liability to pay any further sums to the Consultant or any other liability of any kind:

- (a) if the Consultant is in breach of its obligations under this Contract and fails to remedy the breach within fourteen (14) days of a notice from UNICEF of the breach;
- (b) if the Consultant is in breach of clause 1.6 and/or if the Consultant, the Personnel and/or Affiliates is in breach of clauses 12, 13, 14, 15, 16 and/or 18;
- (c) if the circumstances stated in clauses 5.5 (second paragraph, sub-paragraph (a)), 13 (fifth paragraph), and 14 (second and third paragraphs);

- (d) if any Force Majeure has continued for twenty eight (28) days; and/or
- (e) if the Consultant (i) is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent, (ii) is granted a moratorium or a stay, or is declared insolvent, (iii) makes an assignment for the benefit of one or more of its creditors, (iv) has a receiver appointed on account of the insolvency of the Consultant or enters administration, (v) offers a settlement in lieu of bankruptcy or receivership, (vi) is unable to pay its debts when due, (vii) has become, in UNICEF's reasonable judgment, subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Consultant to perform any of its obligations under the Contract, and/or (viii) is subject to any event equivalent or similar to those stated in this clause 7.2 (first paragraph, sub-paragraph (e)) in any jurisdiction.

UNICEF may also terminate the Contract at any time on immediate written notice to the Consultant if the Contract for Works terminates and/or if UNICEF's mandate or funding applicable to the Contract is curtailed or terminated, whether in whole or in part. UNICEF may also terminate the Contract at any time for convenience on thirty (30) days' written notice to the Consultant.

If UNICEF gives notice terminating this Contract, the Consultant shall take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum, and shall not undertake any further or additional commitments as of and following the date it receives the termination notice. In addition, the Consultant shall take any other action that may be necessary, or that UNICEF may direct in writing, in order to minimise losses or protect and preserve any property, whether tangible or intangible, related to the Contract that is in the possession of the Consultant and in which UNICEF has or may be reasonably expected to acquire an interest.

Following termination:

- (a) the Consultant shall immediately deliver to UNICEF any Contract Materials, Deliverables and/or other Services which have not been delivered and accepted prior to the receipt of a notice of termination, together with any data, materials or work-in-progress related specifically to the Contract;
- (b) the Consultant shall provide its reasonable cooperation to UNICEF and any third party to ensure the orderly migration of Services and transfer of any Contract-related data, materials and work-in-progress;
- (c) the Consultant shall immediately return to UNICEF all Confidential Information;
- (d) no payment shall be due from UNICEF to the Consultant except for Services and Deliverables provided to UNICEF's satisfaction in accordance with the Contract prior to the Consultant's receipt of the notice of termination;
- (e) save following termination by UNICEF as a result of Force Majeure, the termination of the Contract for Works, UNICEF's mandate or funding being curtailed and/or for convenience which is not a result of the Contractor's act, omission or default, the Consultant shall be liable to UNICEF for any costs, losses or expenses incurred as a result of termination; and
- (f) UNICEF shall not be liable for any costs or losses incurred by the Consultant as a result of termination, including without limitation any indirect or consequential loss or loss of profit.

Any termination rights of this Contract by UNICEF shall be without prejudice to all and any other rights and remedies of UNICEF under and in connection with this Contract.

## 8. PAYMENT

### 8.1 Payment to the Consultant

Invoices for the Price shall be submitted by the Consultant to UNICEF within five (5) days of completion of the relevant activities in the Schedule of Payments and shall be accompanied by all supporting documents required to enable UNICEF to assess the sums claimed in the invoice and the documents referred to in clause 5.7.

## 8.2 Time for Payment

Save where otherwise provided in this Contract, UNICEF shall pay sums claimed in any valid and undisputed invoice within thirty (30) days of receipt by UNICEF of the invoice and the supporting documents required by clause 8.1, subject to clause 5 of the Form of Agreement, clauses 8.3 to 8.4, 8.6 and 9.1(g) of these General Conditions and the second paragraph of this clause 8.2.

It is agreed and acknowledged that any discount included or referred to in i) the Consultant's bid in response to the Request for Proposals, ii) the Schedule of Payments, iii) any part of this Contract, and/or iv) any communication in relation to this Contract, shall apply notwithstanding any failure by UNICEF to pay any sums due and payable under this Contract in accordance with this Contract and such discount shall not in any circumstances be recoverable by the Consultant and/or added to the Price.

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## 8.3 Advance Payment

If the Particular Conditions state that this clause 8.3 applies, UNICEF shall make an advance payment of such percentage of the Price as stated in the Particular Conditions after the Consultant submits an executed advance payment guarantee in the form at Appendix 2 ("Advance Payment Guarantee") for the amount of the advance payment from such surety or sureties as shall be approved by UNICEF.

The Consultant shall ensure that the Advance Payment Guarantee is and remains valid and enforceable until the advance payment has been repaid. The advance payment shall be repaid on the basis stated in the Particular Conditions (and shall extend the Advance Payment Guarantee as necessary in order to do so). If the advance payment is to be repaid through deductions from invoices at a rate stated in the Particular Conditions, the advance payment shall be deducted as follows:

- (a) UNICEF shall commence deducting the advance payment from the first accepted invoice in accordance with the Schedule of Payments; and
- (b) deduction shall be made at the rate stated in the Particular Conditions from the amount of each invoice (excluding the advance payment) until such time as the advance payment has been repaid.

Any remaining balance from the advance payment made to the Consultant which has not been recovered by UNICEF on i) termination of this Contract, ii) the completion of the Services to UNICEF's satisfaction or iii) issue of the Certificate of Final Completion, shall be repaid or paid to UNICEF.

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## 8.4 Disputed Invoices

UNICEF shall within fourteen (14) days of receipt of any invoice notify the Consultant of any dispute or discrepancy in the content or form of the invoice. The value of such disputed items shall be deducted from the invoice(s) in which they appear and the balance will be processed for payment. UNICEF and the Consultant shall consult in good faith to promptly resolve any dispute with respect to any invoice or portion thereof.

The Consultant acknowledges and agrees that UNICEF may withhold payment in respect of any invoice if, in UNICEF's opinion, the Consultant has not provided the relevant Services, report or Deliverables in accordance with the Contract and/or if the Consultant has not provided sufficient documentation in support of the invoice.

UNICEF shall have the right to set-off against and/or deduct from any amount or amounts due and payable by UNICEF to the Consultant under the Contract, any payment, debt or other claim (including, without limitation, any overpayment made by UNICEF to the Consultant) owing by the Consultant to UNICEF under the Contract or under any other contract or agreement between the Parties.

## 8.5 Delayed Payment

The Consultant shall not be entitled to interest on any late payment or non-payment of any sums payable under the Contract. Payment shall not relieve the Consultant of its obligations under the Contract and shall not be deemed to be acceptance of the Services.

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## 8.6 Tax Exemption

The Consultant authorizes UNICEF to deduct from the Consultant's invoices any amount representing direct taxes (except charges for utilities services) and customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for UNICEF's official use in accordance with the exemption from tax in Article II, Section 7 of the Convention of the Privileges and Immunities of the United Nations, 1946. In the event any governmental authority refuses to recognize this exemption from taxes, restrictions, duties or charges, the Consultant shall immediately consult with UNICEF to determine a mutually acceptable procedure. The Consultant shall provide full cooperation to UNICEF with regard to securing UNICEF's exemption from, or refund of amounts paid as, value-added taxes or taxes of a similar nature.

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## 8.7 Price Escalation

The Price is payable in the currency stated in the Particular Conditions and shall be a fixed price lump sum, and shall not be subject to any increase as a result of i) any fluctuation, escalation and/or increase in the Consultant's costs, ii) (other than in accordance clause 6.1) the Consultant providing additional or varied services to those included in the Services and/or the Schedule of Payments, iii) any delay and/or prolongation to the Services and/or the Project, and/or iv) any change in currency exchange rates. The Consultant shall not be entitled to any increase in the Price and/or to any further payment under this Contract except as expressly provided in this Contract.

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## 9. INSURANCE

### 9.1 Insurances to be taken out by Consultant

The Consultant's insurance obligations are as follows:

- (a) The Consultant shall have and maintain in effect with reputable insurers and in sufficient amounts, insurance against all of the Consultant's risks under the Contract (including, but not limited to, the risk of claims arising out of or related to the Consultant's performance of the Contract), including the following:
  - (i) Insurance against all claims arising from any damage to property or death and personal injury arising from or in connection with the Consultant's performance under the Contract with a limit of indemnity no less than that stated in the Particular Conditions;
  - (ii) All appropriate workers' or employees' compensation and employer's liability insurance, or its equivalent, with respect to its employees required by any applicable law and to cover any claims by employees arising from the performance of the Contract;
  - (iii) Professional indemnity insurance against all claims arising out of the Consultant's negligence under or in connection with the Contract with a limit of indemnity no less than that stated in the Particular Conditions; and
  - (iv) Such other insurance as may be agreed upon in writing between UNICEF and the Consultant.
- (b) The Consultant shall:
  - (i) maintain the insurance coverage referred to in clause 9.1(a)(i)-(ii) above during the term of the Contract; and

- (ii) maintain the insurance coverage referred to in clause 9.1(a)(iii) for so long as the Consultant continues to be liable under or in connection with this Contract.
  - (c) The Consultant shall be responsible for funding all amounts within any policy deductible or retention.
  - (d) Except with regard to the insurance referred to in sub-paragraph (a)(ii) and (a)(iii) above, the insurance policies required under this clause 9.1 shall (i) name UNICEF as an additional insured; (ii) include a waiver by the insurer of any subrogation rights against UNICEF; and (iii) provide that UNICEF shall receive thirty (30) days' written notice from the insurer prior to any cancellation or change of coverage.
  - (e) The Consultant shall, upon request from time to time, provide UNICEF with satisfactory evidence of the insurance required under this clause 9.1.
  - (f) Compliance with the insurance requirements of the Contract shall not limit the Consultant's liability either under the Contract or otherwise. The Consultant shall notify UNICEF if it is unable to take out or maintain any of the insurance required by this clause 9.1.
  - (g) If the Consultant fails to provide the insurance required under clause 9.1 and/or fails to provide satisfactory evidence in accordance with clause 9.1(e) no further sums shall become due or payable to the Consultant under or in connection with this Contract without prejudice to the Consultant's obligations under this Contract.
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## **10. AUDIT**

### **10.1 Cooperation with Audits and Investigations**

From time to time, UNICEF may, and/or may appoint third parties to, conduct inspections, post-payment audits or investigations relating to any aspect of the Contract including but not limited to the award of the Contract, the way in which the Contract operates or operated, and the performance of the Contract generally, including but not limited to the Consultant's compliance with the Contract. The Consultant shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations, including (but not limited to) making the Personnel, Affiliates and any relevant data and documentation available for the purposes of such inspections, post-payment audits or investigations, at reasonable times and on reasonable conditions, and granting UNICEF and those undertaking such inspections, post-payment audits or investigations access to the Consultant's premises at reasonable times and on reasonable conditions in connection with making the Personnel, Affiliates and any relevant data and documentation available. The Consultant shall require the Personnel, including but not limited to, the Consultant's attorneys, accountants or other advisers, and Affiliates to provide reasonable cooperation with any inspections, post-payment audits or investigations carried out by UNICEF.

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## **11. PRIVILEGES AND IMMUNITIES; SETTLEMENT OF DISPUTES**

### **11.1 Privileges and Immunities**

Nothing in or related to the Contract shall be deemed a waiver, express or implied, deliberate or inadvertent, of any of the privileges and immunities of the United Nations, including UNICEF and its subsidiary organs, under the Convention on the Privileges and Immunities of the United Nations, 1946, or otherwise.

The Consultant shall 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 UNICEF to procure the Services and Deliverables, the Beneficiary and each Host Government or other entity that receives the direct benefit of the Services and Deliverables, from and against all suits, claims, demands, losses and liability of any nature or kind, including their costs and expenses, by any third party and arising out of the acts or omissions of the Consultant or the Personnel in the performance of the Contract. This provision shall 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 copyright or other intellectual property rights or licenses, patent, design, trade-name or trade-mark arising in connection with the Deliverables or other liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property provided or

licensed to UNICEF under the terms of the Contract or used by the Consultant or the Personnel in the performance of the Contract.

UNICEF shall report any such suits, proceedings, claims, demands, losses or liability to the Consultant within a reasonable period of time after having received actual notice. The Consultant shall have sole control of the defence, settlement and compromise of any such suit, proceeding, claim or demand, except with respect to the assertion or defence 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 the Beneficiary, any Host Government or any third party), which as between the Consultant and UNICEF, only UNICEF itself shall assert and maintain. UNICEF shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

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## **11.2 Law**

The terms of the Contract shall be interpreted and applied without application of any system of national or sub-national law.

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## **11.3 Amicable Settlement**

The Parties shall use reasonable efforts to settle amicably any dispute, controversy or claim arising out of, or relating to the Contract. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall 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

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## **11.4 Arbitration**

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 by either Party to arbitration. The arbitration shall take place in accordance with the UNCITRAL Arbitration Rules then in force. The venue of the arbitration shall be New York, NY, USA. The decisions of the arbitral tribunal shall 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 shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (LIBOR) then prevailing and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

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## **12. CONFIDENTIALITY AND TRANSPARENCY**

The Consultant shall not disclose any Confidential Information to any third party:

- (a) except to those of its Affiliates or Personnel who have a need to know such Confidential Information for the purpose of performing obligations under the Contract and have agreed to undertakings of confidentiality equivalent to this clause 12; or
- (b) unless the Confidential Information (i) was obtained from a third party who did not owe a duty of confidentiality to UNICEF; (ii) is in the public domain otherwise than through the Consultant's act or default or the acts or defaults of the Affiliates or Personnel; (iii) was known by the Consultant prior to disclosure by UNICEF; or (iv) at any time is developed by the Consultant completely independently of any disclosures under the Contract.

If the Consultant receives a request for disclosure of any Confidential Information pursuant to any judicial, court, arbitration or law enforcement process, before any such disclosure is made, the Consultant shall give UNICEF sufficient notice of such request in order to allow UNICEF to (i) have a reasonable opportunity to secure the intervention of the relevant national government to prevent disclosure and/or (ii) take such other action as may be appropriate.

The Consultant shall not use the Confidential Information for any purpose other than the performance of its obligations under this Contract and shall not make any use prejudicial to UNICEF of any Confidential Information. The Consultant acknowledges (and shall enable UNICEF to achieve) the commitment to transparency as outlined in UNICEF's Information Disclosure Policy as published on UNICEF's Supply Website from time to time.

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### 13. DATA PROTECTION AND SECURITY

The Parties agree that, as between them, all UNICEF Data, together with all rights (including intellectual property and proprietary rights), title and interest to such UNICEF Data, shall be the exclusive property of UNICEF, and the Consultant has a non-exclusive license to access and use the UNICEF Data as provided in the Contract solely for the purpose of performing its obligations under the Contract. Except for the foregoing license, the Consultant shall have no other rights, whether express or implied, in or to any UNICEF Data or its content.

The Consultant confirms that it has a data protection policy in place that meets all applicable data protection standards and legal requirements and that it shall apply such policy in the collection, storage, use, processing, retention and destruction of UNICEF Data. The Consultant shall comply with any guidance or conditions on access and disclosure notified by UNICEF to the Consultant in respect of UNICEF Data.

The Consultant shall ensure the logical segregation of UNICEF Data from other information to the fullest extent possible. The Consultant shall put in place policies, safeguards and controls (such as administrative, technical, physical, procedural and security infrastructures, facilities, tools, technologies, practices and other protective measures) that are necessary and sufficient to meet the Consultant's confidentiality obligations in this Contract as they apply to UNICEF Data. At UNICEF's request, the Consultant shall provide UNICEF with copies of the applicable policies and a description of the safeguards and controls that the Consultant uses to fulfil its obligations under this Contract. UNICEF may assess the effectiveness of these safeguards, controls and protective measures and, at UNICEF's request, the Consultant shall provide its full cooperation with any such assessment at no additional cost or expense to UNICEF. The Consultant shall not, and shall ensure that the Personnel and Affiliates shall not, transfer, copy, remove or store UNICEF Data from a UNICEF location, network or system without the prior written approval of an authorized official of UNICEF.

Except as otherwise expressly stated in the Contract or with UNICEF's express prior written consent, the Consultant shall not install any application or other software on any UNICEF device, network or system. The Consultant represents and warrants to UNICEF that the Services and Deliverables provided under the Contract shall not contain any Disabling Code, and that UNICEF shall not otherwise receive from the Consultant any Disabling Code in the performance of the Contract. Without prejudice to UNICEF's other rights and remedies, if a Disabling Code is identified, the Consultant, at its sole cost and expense, shall take all steps necessary to: (a) restore and/or reconstruct any and all UNICEF Data lost by UNICEF, the Beneficiary and/or End Users as a result of Disabling Code; (b) furnish to UNICEF a corrected version of the Services without the presence of Disabling Codes; and (c) as needed, re-perform the Services and accelerate the Services such that no delay is caused by the Disabling Code, at the Consultant's cost.

In the event of any Security Incident, the Consultant shall, as soon as possible following the Consultant's discovery of such Security Incident and at its sole cost and expense: (a) notify UNICEF of such Security Incident and of the Consultant's proposed remedial actions; (b) implement any and all necessary damage mitigation and remedial actions; and (c) as relevant, restore UNICEF's and, as directed by UNICEF, the Beneficiary's and/or End Users' access to the Services. The Consultant shall keep UNICEF reasonably informed of the progress of the Consultant's implementation of such damage mitigation and remedial actions. The Consultant, at its sole cost and



expense, shall cooperate fully with UNICEF's investigation of, remediation of, and/or response to any Security Incident. If the Consultant fails to resolve, to UNICEF's reasonable satisfaction, any such Security Incident, UNICEF can terminate the Contract with immediate effect.

The Consultant shall impose the same requirements relating to data protection and security as are imposed upon the Consultant itself by this clause 13 of the Contract, on the Personnel and Affiliates and shall remain responsible for compliance with such requirements by the Personnel and/or Affiliates.

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#### 14. ANTI-CORRUPTION AND ETHICAL STANDARDS

Without limiting the Consultant's obligations under or in connection with this Contract, the Consultant shall be responsible for the professional and technical competence of the Personnel and shall select, for work under the Contract, reliable individuals who shall 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.

The Consultant represents and warrants that neither it nor any of its Affiliates or Personnel, are subject to any sanction or temporary suspension imposed by any United Nations System organisation or other international inter-governmental organisation. The Consultant shall immediately disclose to UNICEF if it or any of its Affiliates and/or Personnel, becomes subject to any such sanction or temporary suspension during the term of the Contract. If UNICEF becomes aware of any such sanction or temporary suspension, the Contract may be terminated by UNICEF.

The execution of the Services shall not give rise to Unusual Commercial Expenses being incurred by the Consultant, the Personnel and/or the Affiliates. If UNICEF becomes aware of any Unusual Commercial Expenses emerge, the Contract may be terminated by UNICEF.

The Consultant shall (a) observe the highest standard 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 the UNICEF Policy Prohibiting and Combatting Fraud and Corruption as available on the UNICEF Supply Website from time to time ("Fraud and Corruption Policy"). The Consultant shall not engage, and shall ensure that the Personnel, do not:

- (a) engage, in any corrupt, fraudulent, coercive, collusive or obstructive conduct as such terms are defined in the Fraud and Corruption Policy; and/or
- (b) offer to give or agree to offer or give or give to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the Contract or any other contract with UNICEF, or for showing favor or disfavor to any person in relation to the Contract or any other contract with other organizations of the United Nations.

The Consultant shall, during the term of the Contract, comply with the standards of conduct required under the UN Supplier Code of Conduct (available on the UNICEF Supply Website).

The Consultant represents and warrants that neither the Consultant nor any of its Affiliates is engaged, directly or indirectly, (a) in any practice inconsistent with the rights set out 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.

The Consultant represents and warrants that it has taken and shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Personnel including its employees or any persons engaged by the Consultant to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Consultant represents and warrants that it has taken and shall take all appropriate measures to prohibit the Personnel including its employees or other persons engaged by the

Consultant, 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.

The Consultant shall inform UNICEF as soon as it becomes aware of any act, omission, incident or report that is inconsistent with and/or in breach of the undertakings and confirmations provided in this clause 14.

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## 15. CONFLICT OF INTEREST

The Consultant shall refrain from making any public statements concerning the project or the Services without the prior approval of UNICEF, and from engaging in any activity which conflicts with its obligations towards UNICEF under the Contract and/or which would compromise the Consultant's independence or that of the Personnel.

The Consultant shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Contract including without limitation as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. UNICEF reserves the right to require additional measures to be taken by the Consultant to prevent or avoid any breach of this clause 15. The Consultant shall ensure that the Personnel is not placed in a situation which could give rise to conflict of interests. The Consultant shall replace, immediately and without compensation from UNICEF, any Personnel exposed to any potential conflict of interest.

The Consultant shall after the conclusion or termination of the Contract, limit its role in connection with the Project to the provision of the Services provided prior to the conclusion or termination of this Contract. Except with the written permission of UNICEF, the Consultant and any Personnel and Affiliates shall be disqualified from the execution of works, supplies or other services for the Project in any capacity save as provided in this Contract, including without limitation tendering for any part of the Project.

The Consultant represents and warrants that:

- (a) no official or employee of UNICEF or of any United Nations organisation has received from or on behalf of the Consultant, or shall be offered by or on behalf of the Consultant, any direct or indirect benefit in connection with the Contract and/or the award of the Contract to the Consultant, including without limitation, any gifts, favours or hospitality;
- (b) it has not and (shall not):
  - (i) made a direct or indirect offer of employment to civil servants and other agents or employees of the government or public administration of the country in which the Project is located;
  - (ii) during the one (1) year period after any UNICEF official and/or employee involved in any aspect of a UNICEF procurement process in which the Consultant has participated has separated or departed from UNICEF and/or ceased to be employed by UNICEF, made a direct or indirect offer of employment to that official and/or employee; and/or
  - (iii) during the two (2) year period after any UNICEF official and/or employee has separated or departed from UNICEF and/or ceased to be employed by UNICEF, allow that former official and/or employee to, directly or indirectly on behalf of the Consultant, communicate with UNICEF, or present to UNICEF, about any matters that were within such former official's and/or employees' responsibilities while at UNICEF.
- (c) in respect of all aspects of the Contract (including the award of the Contract by UNICEF to the Consultant and the selection and awarding of sub-contracts by the Consultant), it has disclosed and shall disclose to UNICEF without delay any conflict of interest and/or any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest.

The Consultant shall inform UNICEF immediately as soon as it becomes aware of any breach or potential breach of this clause 15.

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## 16. CODE OF CONDUCT AND POLICIES

The Consultant shall at all times act loyally and impartially and as a faithful adviser to UNICEF in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion.

The Consultant warrants and represents that it has not and shall not collude with any other consultants and/or the Contractor so as to obtain (or enable any third party to obtain) any unfair gain or benefit in relation to this Contract and/or the Project, including without limitation:

- (a) entering into any agreement with any other person with the aim of preventing tenders being made and/or fixing or adjusting the amount of any tender and/or the conditions on which any tender is made and/or the elements or contents of any tender;
- (b) informing any other person, other than UNICEF, of the amount or the approximate amount of the tender and/or of any confidential information in relation to the tender, except where the disclosure, in confidence, of the amount of the tender was necessary to obtain quotations required for the preparation of the tender;
- (c) providing or receiving any confidential information relating to any other actual or potential tender; and/or
- (d) causing or inducing any third party to enter into any agreement as is mentioned in sub-paragraphs (a)-(b) or to act as mentioned in sub-paragraph (c).

The Consultant represents and undertakes that it has reviewed the Policies. The Consultant shall (and shall ensure that is Personnel and Affiliates shall) comply with and not cause UNICEF to breach the Policies as may be amended from time to time and any other policies provided by UNICEF from time to time. The Consultant shall establish and maintain appropriate measures to promote compliance with the Policies and the requirements of the Policies and shall cooperate with UNICEF's implementation of the Policies.

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## 17. PUBLICATION

The Consultant confirms that it consents to UNICEF's public disclosure of the terms of the Contract should UNICEF so determine and by whatever means UNICEF determines.

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## 18. SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

The Consultant shall comply with and shall not cause UNICEF, the Beneficiary and/or the Host Government to breach any applicable policy, their statutory obligations and/or any international convention in connection with social and environmental responsibility and/or hazardous or deleterious materials, including without limitation the following:

- any convention of the International Labour Organisation;
- the Vienna Convention for the Protection of the Ozone Layer 1985;
- the Montreal Protocol on substances that deplete the Ozone Layer 1987;
- the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal 1989;
- the Stockholm Convention on Persistent Organic Pollutants 2001;
- the Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) Rotterdam, 10 September 1998;
- the United Nations Framework Convention on Climate Change Kyoto Protocol 2008 and the Doha Amendment 2012;
- the United Nations Framework Convention on Climate Change Paris Agreement 2015; and
- the Framework for Advancing Environmental and Social Sustainability in the United Nations System (UN EMG 2012).