

UNITED NATIONS CHILDREN'S FUND (UNICEF)

wishes to enter into a contract for construction works
with

NAME OF VENDOR

for the provision of the following construction works

DESCRIPTION OF THE WORKS

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 "Contractor"),

("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 the construction of the Project as more particularly detailed in this Contract ("Works").
- D. By a bid dated _____ [DATE], as amended by [LIST OF AMENDMENTS AND DATE] a copy of which is attached to this Contract, the Contractor responded to the Request for Proposals and represented that it is qualified, capable and willing to carry out and complete the Works described.
- E. UNICEF wishes to engage the Contractor to carry out and complete the Works all on the terms and conditions set forth in this Contract and the Contractor represents that it is qualified, ready, able and willing to carry out and complete the Works 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 (Form A) 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 (Form A) at Annex 3;
- (v) Appendix 1, Part 1 – Specification;
- (vi) Appendix 1, Part 2 – Design Drawings;
- (vii) The following Appendices:

- (1) Appendix 2 – Advance Payment Guarantee;
 - (2) Appendix 3 – Schedule for Completion;
 - (3) Appendix 4 – Programme;
 - (4) Appendix 5 – Schedule of Payments;
 - (5) Appendix 6 – Bill of Quantities;
 - (6) Appendix 7 – Request for Proposals; and
 - (7) Appendix 8 – Bid; and
- (viii) 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, provided that any technical specifications included in or referred to in the Bill of Quantities at Appendix 6 shall be deemed to form part of the Specification at Appendix 1, Part 1.

4 **ENTIRE AGREEMENT**

The Contract constitutes the entire agreement between UNICEF and the Contractor in connection with Works and the Deliverables.

5 **PAYMENT**

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

Signature:

Print:

Date:

ANNEX 1 - PARTICULAR CONDITIONS

Item	Clause	Entry
Beneficiary	1.1.2	[State “local beneficiary” Works are to be handed to] _____
Completion Date	1.1.3	[State Completion Date (Calendar Day)] _____
Contract Price	1.1.8	[Total fee payable in Schedule of Payments] _____
Defects Liability Period	1.1.10	[12 months] from issue of the Certificate of Substantial Completion. _____
Engineer	1.1.14	[Name, Company] _____
Key Personnel	1.1.19	[Name and Position] _____
Mobilization Period	1.1.20	[Period from Effective Date] OR [Not applicable] _____
Site	1.1.28	[Address] _____
Form of Electronic Communication	1.3(a)	[Email] OR [Does not apply] _____
Address for Communications: UNICEF	1.3(b)	[Address] _____ _____
Address for Communications: Contractor	1.3(b)	[Address] _____

Address for Communications: Engineer 1.3(b)

[Address]

Language for communications 1.4

[Language]

Date of Access to Site 2.2

[[X] days from Effective Date] **OR** [If the date of access to Site is not known at the Contract Date [To be advised in writing by UNICEF]

Inspection Period 2.3

[State period prior Final Completion when inspections can be carried out]

Contractor's Representative 4.3

[Name and position]

Value of Performance Guarantee 4.6

[[10] % of Contract Price]

Advance Payment: Amount 4.7

[[10]% of Contract Price] OR [Not applicable]

Advance Payment: Repayment

[Repayment arrangements, e.g. a percentage of invoices or lump sum payments] OR [Not applicable]

Structural Integrity Guarantee 4.13

[10 years from Substantial Completion] OR [Not applicable]

Mobilization Period	5.2	[Applies] OR [Does not apply]

Liquidated Damages: Amount	5.4	[X] % of the Contract Price per day of delay

Liquidated Damages: Limit	5.4	[X] % of the Contract Price

Frequency of Joint Inspection	6.3	[Frequency e.g. monthly]

Retention Percentage	8.3	[5]% ([Five] Per Cent) [Include higher retention if required]

Currency	8.7	[Local Currency]

ANNEX 2- SPECIAL CONDITIONS

[Set out any Project specific amendments to General Conditions]

ANNEX 3- GENERAL TERMS AND CONDITIONS (FORM A)**1. GENERAL PROVISIONS****1.1 Defined Terms**

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

- 1.1.1 “Affiliates” means any of the Contractor’s corporate affiliates or associates, including parent entities, subsidiaries, and other entities in which the Contractor 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 amended in accordance with this Contract.
- 1.1.4 “Confidential Information” means the Contract Materials and all information and documents in relation to this Contract, the Works and/or the Project received by the Contractor 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 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 Contractor under or in connection with this Contract, including without limitation the Deliverables and whether prepared before or after the date of this Contract.
- 1.1.7 “Contractor” means as defined in the Form of Agreement.
- 1.1.8 “Contract Price” means as stated in the Particular Conditions and any additional sums payable pursuant to clause 7.3.
- 1.1.9 “Defect” means any part of the Works which does not comply with this Contract and/or any damage to the Works for which the Contractor is responsible.
- 1.1.10 “Defects Liability Period” means as stated in the Particular Conditions.
- 1.1.11 “Deliverables” means the work product, document and/or other output of Works required by the Specification to be delivered by the Contractor as part of Works.
- 1.1.12 “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.
- 1.1.13 “End User” means, in the event that the Works 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 Works and/or Deliverables.
- 1.1.14 “Engineer” means the consultant appointed by UNICEF to administer this Contract as identified in the Particular Conditions and any replacement notified by UNICEF to the Contractor from time to time.
- 1.1.15 “Final Completion” means that all Defects and incomplete work that have become apparent prior to the end of the Defects Liability Period have been remedied and completed by the Contractor.
- 1.1.16 “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 Contractor (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.
- 1.1.17 “Form of Agreement” means the form of agreement to which these General Conditions are attached.
- 1.1.18 “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.

- 1.1.19 “Key Personnel” means as identified 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 Contractor and UNICEF during negotiations.
- 1.1.20 “Mobilization Period” means the period stated in the Particular Conditions from the Effective Date (as defined in clause 5.1).
- 1.1.21 “Parties” means as defined in the Form of Agreement.
- 1.1.22 “Personnel” means the Contractor’s officials, employees, directors, agents, sub-consultants, sub-contractors and/or other representatives.
- 1.1.23 “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.
- 1.1.24 “Project” means as defined in the Form of Agreement.
- 1.1.25 “Schedule for Completion” means Appendix 3 to the Form of Agreement.
- 1.1.26 “Schedule of Payments” means Appendix 5 to the Form of Agreement.
- 1.1.27 “Security Incident” means, with respect to any information system, service or network used in the delivery of the Works 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.
- 1.1.28 “Site” means the sites at which the Works are to be carried out including without limitation the site identified in the Particular Conditions and any other Site notified by UNICEF and/or the Engineer to the Contractor.
- 1.1.29 “Specification” means Appendix 1, Part 1.
- 1.1.30 “Substantial Completion” means that the Works have been completed in accordance with this Contract, are free from Defects 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.
- 1.1.31 “Technical Inspection” means an inspection of the Works to identify any outstanding defects and incomplete works, carried out by the Engineer in the presence of UNICEF (at UNICEF’s discretion), the Contractor and (if UNICEF notifies the Contractor that their attendance is required) representatives of the Beneficiary and/or the Host Government.
- 1.1.32 “UNICEF” means as defined in the Form of Agreement.
- 1.1.33 “UNICEF Data” means any and all information or data processed and/or held in digital form that (a) is provided to the Contractor by, or on behalf of UNICEF, the Beneficiary and/or End Users under the Contract, through UNICEF’s, the Beneficiary’s and/or End Users’ use of Works or in connection with Works, or (b) is collected by the Contractor in the performance of the Contract.
- 1.1.34 “UNICEF Supply Website” means UNICEF’s public access webpage for suppliers available at 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 Contractor from time to time.
- 1.1.35 “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.
- 1.1.36 “Works” means the works to be carried out and completed by the Contractor under this Contract as provided in the Specification.

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.

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 Contractor shall reply to any communication under or in connection with this Contract within five (5) days of receipt of the communication, provided that the Contractor shall reply within one (1) day in the event of any emergency and/or health and safety issue. Any communication, reply, notice or application issued to the Engineer by the Contractor shall be in writing and copied to UNICEF. For the avoidance of doubt the Contractor shall only comply with written instructions from the Engineer and/or UNICEF and any verbal instructions to the Contractor shall not be binding or effective unless are subsequently confirmed in writing by the Engineer and/or UNICEF.

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.

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 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.

1.7 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 Engineer, the Beneficiary, the Host Government

in the country where the Project is located and any other third parties involved in the Project. Without limitation to the foregoing, the Contractor shall enable the Engineer to monitor, inspect and check the Works and/or the Site as required by UNICEF and shall not interfere with or interrupt the Engineer's monitoring, inspection, checking and/or other activities.

2. UNICEF

2.1 Assistance

UNICEF shall supply the Contractor when requested with any information and/or documentation at its disposal which may be relevant to the performance of Works. Except as expressly set out in this Contract, UNICEF shall have no obligation to provide any assistance to the Contractor 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 fulfillment by the Contractor of its obligations under the Contract.

2.2 Access to the Site

To the extent UNICEF is able to do so, UNICEF shall give the Contractor reasonable access to, and use of the Site by the date stated in the Particular Conditions. If UNICEF provides access to and use of the Site to the Contractor for the purposes of the Contract, the Contractor 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, including, but not limited to, the Policies and any applicable information security policies. The Contractor shall ensure that only the Personnel that have been authorized by the Contractor, and approved by the Engineer have access to the Site.

The Contractor acknowledges that prior to the Contractor being provided with access to and use of the Site, the Site may need to be cleared and/or other site preparation and/or enabling works may be required ("Site Clearance"). If the Contractor's access to the Site is delayed as a result of any Site Clearance being required, the Contractor shall be entitled to an extension of time in accordance with clause 5.3, but not to any increase in the Contract Price.

2.3 Inspection and Acceptance

UNICEF and the Engineer shall at all times be given access to the Site and/or to any place of fabrication of goods, materials or plant to be supplied under the Contract in order to inspect and request testing of such goods, materials or plant, and the Contractor shall make arrangements for such tests to be carried out at his own cost. UNICEF and/or the Engineer shall also have until the period of time stated in the Particular Conditions (or if no period is stated a reasonable time) prior the issue of the Certificate of Final Completion in accordance with clause 6.4, the right to inspect any Works (including without limitation any goods, materials or plant), report and/or Deliverable and to accept or reject the Works, 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 Contractor'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 Works, any report or Deliverable. Unless they have been completed to UNICEF's satisfaction and subsequently pass the relevant test, UNICEF shall be entitled, at UNICEF's discretion, to withhold, retain and/or deduct any sums claimed by the Contractor in respect of any Works, reports and/or Deliverables which have been rejected and/or which have failed any tests and/or require payment of any sums paid in respect of any rejected Works and/or Deliverables as a debt.

3. ENGINEER

3.1 Engineer's Instructions

The Engineer shall have authority to perform the duties assigned to the Engineer under this Contract and the Contractor shall comply with all written instructions from the Engineer and/or UNICEF under or in connection with this Contract, including without limitation any instruction resolving any ambiguity, conflict or inconsistency in or between the documents forming part of this Contract, provided that the Engineer shall not have authority to, without UNICEF's prior written consent:

- (a) issue any instruction, instruct or agree to any change to the scope of the Works and/or the programme for the Project which increases the Contract Price and/or delays completion of the Project, issue any assessment of any variation and/or request for an extension of time and/or award the Contractor any extension of time and/or adjustment to the Contract Price, which could or will result in an increase of the original Contract Price and/or delay completion of the Project;
- (b) issue a notice to proceed;
- (c) instruct the use of any Provisional Sum; and/or
- (d) carry out a Technical Inspection and/or issue the Certificates of Substantial Completion or Final Completion.

The Contractor shall not be entitled to any adjustment to the Contract Price, any additional payment and/or to any extension of time as a result of any unauthorised instruction from the Engineer.

4. THE CONTRACTOR'S OBLIGATIONS

4.1 Works

The Contractor shall provide and maintain the Works and deliver the Deliverables in accordance with the Specification, the design drawings in Appendix 1, Part 2, the Contract and to UNICEF's satisfaction. Except as expressly provided in the Contract, the Contractor shall be responsible at the Contractor's sole cost for providing all the necessary personnel, equipment, material and supplies and for making all arrangements necessary for the carrying out and completion of the Works and delivery of the Deliverables in accordance with the Contract. Without limiting the Contractor's obligations under this Contract, the Contractor shall exercise all due care and diligence in providing and maintaining the Works.

4.2 Laws and Standards

The Contractor shall provide the Works in accordance with all standards, codes and specifications applicable to the Works and/or the Project which an experienced contractor would be expected to comply with and shall comply with all laws, ordinances, rules, and regulations applicable to the Contractor's obligations under the Contract, the Project, Works and/or the Deliverables and shall not cause UNICEF to breach any applicable law.

4.3 Contractor's Personnel

At any time during the term of the Contract, the Engineer can make a written request that the Contractor replace one or more of the Personnel. The Engineer shall not be required to give an explanation or justification for this request to the Contractor. Within seven (7) days of receiving the Engineer's request for replacement the Contractor 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 Contractor shall not replace the Key Personnel or remove the Key Personnel from the provision of Works without the Engineer's prior written consent. If one or more of the Key Personnel become unavailable, for any reason, for work under the Contract, the Contractor shall notify the Engineer at least fourteen (14) days in advance. In notifying the Engineer, the Contractor 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 Contractor has appointed a representative ("the Contractor's Representative") who has the Contractor's full authority in respect of all matters connected with this Contract. The Contractor's Representative is named in the Particular Conditions. The Contractor's Representative shall not be changed without the prior written approval of UNICEF. The Contractor's Representative shall have the responsibility to co-ordinate the effort of the Parties.

Without prejudice to the Contractor'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 9.1 if the Key Personnel and/or the Contractor's Representative cease to be involved in the provision of Works and suitable replacements have not been proposed by the Contractor 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 Contractor's Personnel shall, in all cases, be borne exclusively by the Contractor.

The Contractor shall comply and shall ensure that its sub-contractors comply with all applicable international standards and labour laws, rules and regulations relating to the employment of national and international staff in connection with Works, 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 and law. The Contractor shall be fully responsible and liable for, and shall indemnify and hold UNICEF harmless for and against all payments or any other benefits due to the Personnel for their works and/or services in relation to the performance of the Contract.

4.4 Safety and Security of Personnel

The Contractor shall comply and shall ensure that its sub-contractors comply with all applicable international standards and labour laws, rules and regulations relating to the health and safety and security of employees. The Contractor shall be fully responsible and liable for, and shall indemnify and hold UNICEF harmless for and against (a) any act, omission, negligence or misconduct of the Personnel; (b) any insurance coverage in respect of the Personnel which may be required or desirable for the purpose of the Contract; (c) the safety and security of the Personnel and any sub-contractors' personnel; or (d) any costs, expenses, or claims associated with any illness, injury, death or disability of the Personnel and/or any sub-contractors' personnel.

The Contractor shall ensure that the Works, Personnel and the Deliverables comply with all applicable health and safety requirements (including without limitation all applicable health and safety law), shall implement adequate processes and procedures on Site in order to avoid all risks to the health and safety of any individuals on or around Site and shall ensure the security of the Site until issue of the Certificate of Final Completion in accordance with clause 6.4.

4.5 Sub-Contracting

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

4.6 Performance Guarantee

The Contractor shall provide on the date of the Form of Agreement a performance guarantee in the form of an on demand bond for the percentage of the Contract Price stated in the Particular Conditions in a form and from a bank acceptable to UNICEF which is enforceable until issue of the Certificate of Substantial Completion in accordance with clause 6.1 (“Performance Guarantee”).

Without prejudice to the Contractor’s obligations under this Contract, no sums shall become due or payable to the Contractor under or in connection with this Contract if a Performance Guarantee has not been provided to UNICEF and/or is not maintained, increased and/or replaced such that UNICEF has the benefit of a Performance Guarantee at the percentage of the Contract Price stated in the Particular Conditions until the issue the Certificate of Substantial Completion in accordance with clause 6.1. UNICEF shall return the Performance Guarantee within thirty (30) days of the Certificate of Substantial Completion in accordance with clause 6.1.

4.7 Advance Payment Guarantee

If the Particular Conditions state that this clause 4.7 applies, UNICEF shall make an advance payment for the percentage of the Contract Price stated in the Particular Conditions after the Contractor submits an executed advance payment guarantee in the form at Appendix 2 (“Advance Payment Guarantee”), from such surety or sureties as shall be approved by UNICEF. The Contractor shall ensure that the Advance Payment Guarantee is valid and enforceable until the advance payment has been repaid in full (and shall extend the Advance Payment Guarantee as necessary in order to do so).

Any advance payment shall be repaid on the basis stated in the Particular Conditions. 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 which has not been recovered by UNICEF on i) termination of this Contract, or ii) the issue of the Certificate of Substantial Completion in accordance with clause 6.1 shall be repaid or paid to UNICEF immediately.

4.8 The Site and the Surroundings

The Contractor shall have full responsibility for the operations and methods of construction used by the Contractor. The Contractor shall also have full responsibility for i) the adequacy, stability, safety and security of the Site and its surroundings, ii) the ground conditions at Site and its surroundings, and iii) any other physical conditions encountered by the Contractor in providing the Works, (“Site Conditions”) and shall not be entitled to any adjustment to the Contract Price, to any additional payment and/or to any extension of time as a result of the Site Conditions and/or any change in the Site Conditions.

The Contractor shall set up at the Site. The Contractor shall not be entitled to any additional payment, to an increase in the Contract Price and/or to an extension of time as a result of any delay in the Contractor setting up at the Site. Without prejudice to the Contractor’s obligations under this Contract, no sums shall be due or payable to the Contractor under this Contract unless it has set up and is operating at the Site.

4.9 Care of Environment

The Contractor shall ensure that minimal damage occurs to the environment, the vegetation, existing structures and roads and/or utilities as a result of the Works. The Contractor shall notify UNICEF and the Engineer within one (1) day of any damage caused to the environment, the vegetation, existing structures, roads and utilities in carrying out the Works and shall promptly remedy the damage at no cost to UNICEF.

4.10 Materials and Samples

The Contractor shall submit samples of goods and materials, and relevant information, in sufficient time for UNICEF and/or the Engineer to review the samples. Each sample shall be labelled as to origin and intended use in the Works. All materials used in the course of these Works shall be new, proper for their use and fit for their intended purpose. No goods or materials from the Site shall be re-used unless permitted by the Engineer. All other goods and materials shall be stored on Site until the end of the Works. All materials, equipment and products shall be stored and installed in accordance with the written recommendations of the manufacturer.

4.11 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 4.11 vest in the Contractor, the Contractor hereby assigns ownership of the Proprietary Rights to UNICEF.

The Contractor 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 Contractor 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 Contractor waives any rights it may have to be identified as author or attributed in respect of the Contract Materials.

4.12 Records

The Contractor shall keep full accurate and systematic records and accounts in respect of the Works and the performance of its obligations under this Contract, including without limitation sufficient records to establish that the time and the actual incidental expenditure identified in the Contractor's invoice(s) have been duly incurred in the provision of the Works.

4.13 Structural Integrity

The Contractor guarantees the structural integrity and stability of the Works for the period stated in the Particular Conditions and shall at the Contractor's cost repair and remedy any collapse or structural defect occurring within that period.

5. TIME FOR COMPLETION

5.1 Agreement Effective

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

5.2 Commencement and Completion of Works

If the Contract Particulars state that a Mobilization Period applies the Contractor shall complete the mobilization for the Works within the Mobilization Period. The Contractor shall commence the Works following receipt of a notice to proceed from UNICEF and/or the Engineer. The Contractor shall carry out and complete the Works regularly and diligently and without delay and in accordance with the construction programme at Appendix 4 to the Form of Agreement (“Programme”). The Contractor shall complete the Works in accordance with the Schedule for Completion and by the Completion Date.

If at any time, it should appear that the actual progress of the work does not conform to the Programme, if the Engineer notifies the Contractor that it is entitled to any extension of time in accordance with clauses 5.3 and 7.2-7.3 and/or if otherwise instructed by the Engineer, a revised Programme shall be submitted by the Contractor, within seven (7) days of the delay or the Engineer’s instruction or notification, whichever is earlier, showing modifications necessary to ensure completion on time.

5.3 Extension of Time

In addition to the Contractor’s rights under clauses 7.2-7.3 following a Variation, the Contractor shall be entitled to a reasonable extension of time to the Completion Date and/or the Schedule for Completion as determined by the Engineer in accordance with clauses 7.2-7.3, but not to any additional payment and/or change in the Contract Price, if the Contractor is unable to complete the Works by the Completion Date and/or in accordance with the Schedule for Completion as a result of:

- (a) delay in the Contractor being provided access to or use of the Site as a result Site Clearance being required, save to the extent the Site Clearance and/or the delay is a result of any act, omission or default of the Contractor;
 - (b) delay in obtaining any third party approvals, consents and/or permits required for performance of Works and/or the Works save to the extent the Contractor is responsible for assisting with or obtaining such approval, consent or permit under this Contract;
 - (c) Force Majeure;
 - (d) any delay in the commencement of the Works and/or the issue of a notice to proceed in accordance with clause 5.2, as a result of any act or omission of UNICEF, the Beneficiary and/or the Host Government in which the Project is located; and
 - (e) delay of the importation of goods, materials, plant or equipment into the country in which the Project is located as a result of unforeseeable customs or border control and checks.
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5.4 Liquidated Damages

If the Contractor fails to achieve Substantial Completion by the Completion Date and/or complete the Works in accordance with the Schedule for Completion, UNICEF shall be entitled to deduct from any payment due to the Contractor and/or recover as a liquidated damages in the amount stated in the Particular Conditions. These liquidated damages shall not relieve the Contractor from any other obligations, responsibilities or liabilities under the Contract. If the total delay damages payable in accordance with clause 5.4 exceed more than the limit on liquidated damages stated in the Particular Conditions, UNICEF may, at its discretion, on immediate notice to the Contractor:

- (a) terminate this Contract, appoint a third party to complete the Works 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 Works will be completed by the Contractor at the Contractor's expense,

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

5.5 Rate of Progress

If, at any time actual progress of the Works is too slow for the Contractor to be able to comply with this Contract, UNICEF and/or the Engineer may instruct the Contractor to accelerate the Works in order to expedite progress so to comply with this Contract. If the Contractor fails to achieve Substantial Completion by the Completion Date, the Contractor shall accelerate the Works so that Substantial Completion occurs as soon as possible. This Contract shall continue to be valid and effective and shall survive notwithstanding i) any extension of time to the Completion Date in accordance with this Contract and/or ii) any failure by the Contractor to achieve Substantial Completion by the Completion Date. Save as provided in clauses 7.2-7.3, the Contractor shall not be entitled to any additional payment as a result of any acceleration instructed or required in accordance with this clause 5.5.

6. TAKING OVER

6.1 Substantial Completion

The Contractor shall notify the Engineer when the Contractor considers that the Works have been completed in accordance with this Contract and are free from Defects, and the Works can be effectively used for the purpose for which they are intended.

When the Engineer considers that Substantial Completion may have occurred (save for minor defects and incomplete work) a Technical Inspection shall be carried out when instructed by UNICEF. Within seven (7) days of the Technical Inspection the Engineer shall issue a defects list 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").

The Contractor shall comply with the Defects List for Substantial Completion and shall notify the Engineer when it considers that all defects and incomplete work which the Contractor was required to remedy and complete in the Defects List for Substantial Completion have been remedied and completed.

When instructed by UNICEF a further Technical Inspection shall be carried out to determine whether or not a certificate of substantial completion (the "Certificate of Substantial Completion") should be issued.

UNICEF (or with UNICEF's prior written consent the Engineer on UNICEF's behalf) shall issue the Certificate of Substantial Completion when UNICEF considers that Substantial Completion has occurred, provided that UNICEF shall be entitled, at UNICEF's absolute discretion, to issue the Certificate of Substantial Completion notwithstanding that UNICEF does not consider that Substantial Completion has occurred. Issue of any Certificate of Substantial Completion shall not relieve or limit the Contractor's obligations or liabilities under or in connection with this Contract and/or prejudice UNICEF's rights and obligations under or in connection with this Contract.

6.2 Handover of Site

Following issue of the Certificate of Substantial Completion, the Site and the Works shall be taken over by UNICEF and the Contractor shall within fourteen (14) days of issuing of the Certificate of Substantial Completion provide any documents required to enable the Beneficiary to occupy and use the Works, including without limitation the Contract Materials, as-built drawings, shop drawings and an operation and maintenance manual for the building and any equipment installed, containing all warranties. The Contractor shall also train the staff of UNICEF and/or the Beneficiary on the basic operation and maintenance requirements and procedures.

6.3 Defects Liability Period

The Engineer and the Contractor shall perform periodic joint inspections at the Site during the Defects Liability Period at the frequency stated in the Particular Conditions to inspect any outstanding Defects and the Engineer shall provide a report 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 within seven (7) days of the inspection.

If the Contractor fails to remedy any Defect or incomplete work within the time required under this Contract UNICEF may:

- (a) carry out the work or procure a third party to carry out the work at the Contractor's cost and the costs incurred by UNICEF in doing so shall be recoverable as a debt;
- (b) require the Engineer to assess a reasonable reduction in the Contract Price to reflect the uncorrected Defect; and/or
- (c) if the Defect or incomplete work deprives UNICEF or the Beneficiary of substantially the whole benefit of the Works or any part of the Works, terminate this Contract and recover all sums paid for the Works plus financing costs and all costs arising from the termination.

6.4 Final Completion

At the end of the Defects Liability Period, if instructed by UNICEF a Technical Inspection shall occur. Within seven (7) days of any such Technical Inspection the Engineer shall issue a defects list 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"). The Contractor shall comply with the Defects List for Final Completion.

If instructed by UNICEF a further Technical Inspection shall be carried out by the Engineer to determine whether Final Completion has occurred and the certificate of Final Completion should be issued ("Certificate of Final Completion"). UNICEF (or with UNICEF's prior written consent the Engineer on UNICEF's behalf) shall issue a Certificate of Final Completion when UNICEF considers that Final Completion has occurred and that the Works are satisfactory and are in accordance with this Contract, provided that UNICEF shall be entitled, at UNICEF's absolute discretion, to takeover the Site and/or issue the Certificate of Final Completion notwithstanding that UNICEF does not consider that Final Completion has occurred. Any such early takeover and/or issue of any Certificate of Final Completion shall not relieve or limit the Contractor's obligations or liabilities under or in connection with this Contract and/or prejudice UNICEF's rights and obligations under or in connection with this Contract.

6.5 Clearance of Site

Following the issue of each of i) the Certificate of Substantial Completion and ii) the Certificate of Final Completion, the Contractor shall clear away and remove from Site all equipment, surplus materials, rubbish and temporary works of every kind which are not being used for the performance of the Contractor's obligations under this Contract, and leave the Site in a clean and functional condition. If the Contractor fails to do so within twenty eight (28) days of the Certificate of Substantial Completion or the Certificate of Final Completion (as applicable), UNICEF may sell or otherwise dispose of any remaining items and the cost of doing so, less the sums received by UNICEF from any sale, shall be recoverable by UNICEF from the Contractor as a debt and/or deducted from any sums due to the Contractor under this Contract.

7. VARIATIONS

7.1 Right to Vary

Subject to clause 3.1 the Engineer may instruct any additional, or varied works and/or any omission of any Works at any time before the Certificate of Substantial Completion. Following any omission of any Works the Contract Price shall be reduced and the Completion Date and Schedule for Completion changed on a reasonable basis as is assessed by the Engineer and notified to the Contractor following the omission, and the Contractor shall not be entitled to any loss or expense or any other payment as a result of or in connection with any omission, including without limitation if the omitted Works are carried out by UNICEF or any third party.

7.2 Variations

In this Contract the Contractor shall, subject to clause 7.3, be entitled to a variation if the Contractor is required to carry out any additional or varied works and/or services as a result of any valid instruction from the Engineer and/or UNICEF, including without limitation, any instruction from the Engineer resolving any ambiguity, conflict or inconsistency in or between the documents forming part of this Contract, any change in law which was unforeseeable on the Effective Date, and/or any change in the location of the Site instructed by UNICEF and/or the Engineer ("Variation").

7.3 Variation Procedure

The Contractor shall as soon as possible (and within fourteen (14) days) after becoming aware of circumstances giving rise to any potential extension of time as provided in clause 5.3 and/or any potential Variation notify the Engineer in writing of the potential Variation and provide sufficient detail of additional costs or delay arising from the Variation to enable the Engineer to make a proper assessment of the Variation. The Contractor shall use all reasonable endeavours to minimise the effect of any circumstances giving rise to an extension of time and/or a Variation.

The Engineer shall respond to such notice within fourteen (14) days of receipt, instructing or rejecting the extension of time and/or Variation or requesting further information from the Contractor. Any Variation shall be valued by the Engineer i) in accordance with any bill of quantities forming part of the Contract in so far as they are applicable to the Variation and ii) at such other rates as the Engineer considers reasonable having regard to the information provided by the Contractor.

Notwithstanding any other provision of this Contract, the Contractor 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 Contractor is not entitled to an extension of time and/or ii) any additional payment, increase in the Contract Price and/or an extension of time:

- (a) if the Contractor has not complied with clause 7.3; and/or
 - (b) as a result of any default, act or omission of the Contractor.
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7.4 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.

8. CONTRACT PRICE AND PAYMENT

8.1 Payment to the Contractor

The Contractor shall notify the Engineer if it considers that any Works or part of the Works and/or any Deliverables for which sums are payable in accordance with the Schedule of Payments have been completed or provided in accordance with the Contract, with supporting documents. The Engineer shall, within fourteen (14) days of receipt of the Contractor's notice, issue a certificate stating the extent to which the relevant Works are considered to be complete and/or the Deliverables have been provided in accordance with the Contract.

Following issue of a certificate by the Engineer which states that any Works are considered to be complete and/or that any Deliverables have been provided in accordance with the Contract, the Contractor may issue an invoice to UNICEF and the Engineer in respect of the relevant Works, accompanied by all supporting documents required to enable the Engineer to assess the sums claimed in the invoice. Each invoice shall be approved or rejected, with justification, within fourteen (14) days of receipt by the Engineer. If an invoice is rejected the Contractor shall be entitled to resubmit the invoice. Save as otherwise provided in this Contract, UNICEF shall pay sums claimed in any valid and accepted invoice in respect of any Works certified by the Engineer within thirty (30) days of receipt by the UNICEF of the invoice and the supporting documents required by this clause, subject to clause 5 of the Form of Agreement, clauses 4.6, 4.8 (second paragraph), 8.3-8.6 and 10.1(g) of these General Conditions and the third paragraph of this clause 8.1.

It is agreed and acknowledged that any discount included or referred to in i) the Contractor'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 Contractor and/or added to the Contract Price.

8.2 Lump Sum and Bill of Quantities

The Contract Price shall be a fixed price lump sum and the Contractor shall not be entitled to any increase in the Contract Price, any change in any rates and/or to any further payment under this Contract except as expressly provided in this Contract. The Contractor shall be deemed to have satisfied himself of the adequacy of the Contract Price to cover all his obligations under the Contract. Any quantities set out in the Schedule of Payments and/or any bill of quantities forming part of the Contract are not taken to be actual or correct quantities of the Works which the Contractor is required to execute and the Contractor shall not be entitled to any increase in the Contract Price, any additional payment and/or an extension of time as a result of any difference between the quantities provided and the quantities in the Schedule of Payments and/or any bill of quantities.

Any provisional sum included in any bill of quantities forming part of this Contract and/or the Schedule of Payments ("Provisional Sum") shall only be used if and to the extent instructed in writing by UNICEF. Following any instruction from UNICEF to use any Provisional Sum, the Contract Price shall be adjusted by the amount instructed by UNICEF and the Contractor shall only be entitled to be paid the amounts instructed by the Engineer in respect of the Provisional Sum.

8.3 Payment of Retention

The retention percentage stated in the Particular Conditions shall be deducted from any sum due to the Contractor under this contract ("Retention"). The Retention shall be paid to the Contractor in accordance with clause 8.1 following submission of an invoice by the Contractor after issue of the Certificate of Final Completion.

Following issue of the Certificate of Substantial Completion, if agreed by UNICEF, the Retention shall be paid to the Contractor if the Contractor submits to UNICEF an unconditional on demand retention bond for the full value

of the Retention which shall be enforceable until issue of the Certificate of Final Completion in a form and from a surety acceptable to UNICEF.

8.4 Disputed Invoices

The Engineer shall within 14 (fourteen) days of receipt of any invoice notify the Contractor 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/or the Engineer and the Contractor shall consult in good faith to promptly resolve any dispute with respect to any invoice or portion thereof.

The Contractor acknowledges and agrees that UNICEF may withhold payment in respect of any invoice if, in UNICEF's opinion, the Contractor has not provided the relevant Works, report or Deliverables in accordance with the Contract and/or if the Contractor 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 Contractor under the Contract, any payment, debt or other claim (including, without limitation, any overpayment made by UNICEF to the Contractor) owing by the Contractor to UNICEF under the Contract or under any other contract or agreement between the Parties.

8.5 Delayed Payment

The Contractor 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 Contractor of its obligations under the Contract and shall not be deemed to be acceptance by UNICEF of the Works.

8.6 Tax Exemption

The Contractor authorizes UNICEF to deduct from the Contractor'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 Contractor shall immediately consult with UNICEF to determine a mutually acceptable procedure. The Contractor 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.

8.7 Price Escalation

The Contract Price is payable in the currency stated in the Particular Conditions and the Contract Price and any rates included in the Contract shall be fixed, and shall not be subject to any increase as a result of any fluctuation, escalation and/or increase in the Contractor's costs or otherwise and/or any change in currency exchange rates.

9. SUSPENSION OF WORKS AND TERMINATION OF AGREEMENT

9.1 Suspension

UNICEF shall be entitled to instruct the Contractor to suspend provision of the Works and any other activities being carried out by the Contractor and to 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 Contractor under this Contract following suspension, save for any sums (i) that are due and payable in accordance with this Contract and which arise prior

to the suspension and/or (ii) that become due and payable in accordance with this Contract following any notice from UNICEF to recommence the Works or any other activities. During any period of suspension under this clause 9.1 the Contractor 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 the safety and security of the Site and the Works and maintain any performance guarantee, any advance payment guarantee and all insurances which are required to be provided by the Contractor under this Contract.

9.2 Termination of Agreement

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

- (a) if the Contractor 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 Contractor is in breach of clause 4.5 and/or if Contractor, the Personnel and/or Affiliates is in breach of clauses 13, 14, 15, 16, 17 and/or clause 19;
- (c) if the circumstances stated in clauses 5.4(a), 6.3(c), 14 (fifth paragraph) and 15 (second and third paragraphs);
- (d) if any Force Majeure has continued for twenty eight (28) days; and/or
- (e) if the Contractor (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 Contractor 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 Contractor 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 9.2 (first paragraph, sub-paragraph (e)) in any jurisdiction.

UNICEF may also terminate the Contract at any time on immediate written notice to the Contractor 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 Contractor.

If UNICEF gives notice of termination or suspension under this Contract, the Contractor 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 Contractor 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 Contractor and in which UNICEF has or may be reasonably expected to acquire an interest.

Following termination:

- (a) the Contractor shall immediately deliver to UNICEF any Contract Materials, Deliverables and/or any work which has 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 Contractor shall provide its reasonable cooperation to UNICEF and any third party to ensure the orderly migration of the Works and transfer of any Contract-related data, materials and work-in-progress;
- (c) the Contractor shall immediately return to UNICEF all Confidential Information;
- (d) no payment shall be due from UNICEF to the Contractor except for Works and Deliverables provided to UNICEF's satisfaction in accordance with the Contract prior to the Contractor's receipt of the notice of termination;

- (e) save following termination by UNICEF as a result of Force Majeure, UNICEF's mandate or funding applicable to the Contract is curtailed or for convenience other than as a result of any act omission or default of the Contract, the Contractor 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 Contractor 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.

10. INSURANCE

10.1 Insurances to be taken out by Contractor

The Contractor's insurance obligations are as follows:

- (a) The Contractor shall have and maintain in effect with reputable insurers and in sufficient amounts, insurance against all of the Contractor's risks under the Contract (including, but not limited to, the risk of claims arising out of or related to the Contractor's performance of the Contract), including the following:
 - (i) insurance against all risks in respect of the Works and the Contractor's property and any equipment in carrying out the Works, in the joint names of the Contractor and UNICEF, for the reinstatement value of the Works;
 - (ii) insurance against any damage to property or death and personal injury in an adequate amount to cover all claims arising from or in connection with the Contractor's performance under the Contract;
 - (iii) all appropriate workers' compensation and employer's liability insurance, or its equivalent, with respect to its employees at such level as is required by any applicable law and/or as is appropriate to cover any claims by employees arising from the performance of the Contract; and
 - (iv) such other insurance as may be agreed upon in writing between UNICEF and the Contractor.
 - (b) The Contractor shall maintain the insurance coverage required in clause 10.1(a)(i)-(iv) above (and shall ensure any sub-contractors maintain the insurance coverage referred to in clause 10.1(a)(iii)) until issue of the Certificate of Final Completion.
 - (c) The Contractor shall be responsible for funding all amounts within any policy deductible or retention.
 - (d) Except for the insurance referred to in paragraph (a)(iii) above, the insurance policies required under this clause 10.1 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 Contractor shall, following execution of the Form of Agreement and upon request from time to time, provide UNICEF with satisfactory evidence of the insurance required under this clause 10.1.
 - (f) Compliance with the insurance requirements of the Contract shall not limit the Contractor's liability either under the Contract or otherwise. The Contractor shall notify UNICEF if it is unable to take out or maintain any of the insurance required by this clause 10.1.
 - (g) If the Contractor fails to provide the insurance required under clause 10.1 and/or fails to provide satisfactory evidence in accordance with clause 10.1(e), without prejudice to the Contractor's obligations under this Contract no further sums shall become due or payable to the Contractor under or in connection with this Contract.
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11. AUDIT

11.1 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 Contractor's compliance with the Contract. The Contractor 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 Contractor's premises at reasonable times and on reasonable conditions in connection with making the Personnel and Affiliates and any relevant data and documentation available. The Contractor shall require the Personnel, including but not limited to, the Contractor's attorneys, accountants or other advisers, and Affiliates to provide reasonable cooperation with any inspections, post-payment audits or investigations carried out by UNICEF.

12. PRIVILEGES AND IMMUNITIES; SETTLEMENT OF DISPUTES

12.1 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 Contractor 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 Works and Deliverables, the Beneficiary and each Host Government or other entity that receives the direct benefit of Works 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 Contractor 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 Contractor and/or the Personnel in the performance of the Contract.

UNICEF shall report any such suits, proceedings, claims, demands, losses or liability to the Contractor within a reasonable period of time after having received actual notice. The Contractor 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 and/or any third party), which as between the Contractor 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.

12.2 Law

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

12.3 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.

12.4 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.

13. CONFIDENTIALITY AND TRANSPARENCY

The Contractor 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 13; 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 Contractor's act or default or the acts or defaults of the Affiliates or Personnel; (iii) was known by the Contractor prior to disclosure by UNICEF; or (iv) at any time is developed by the Contractor completely independently of any disclosures under the Contract.

If the Contractor 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 Contractor 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 Contractor 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 Contractor 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.

14. 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 Contractor 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 Contractor shall have no other rights, whether express or implied, in or to any UNICEF Data or its content.

The Contractor 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 Contractor shall comply with any guidance or conditions on access and disclosure notified by UNICEF to the Contractor in respect of UNICEF Data.

The Contractor shall ensure the logical segregation of UNICEF Data from other information to the fullest extent possible. The Contractor shall put in place policies, safeguards and controls that are necessary and sufficient to meet the Contractor's confidentiality obligations under this Contract in respect of UNICEF Data. At UNICEF's request, the Contractor shall provide UNICEF with copies of the applicable policies and a description of the safeguards and controls. UNICEF may assess the effectiveness of these safeguards, controls and protective measures and, at UNICEF's request, the Contractor shall provide its full cooperation with any such assessment at no additional cost or expense to UNICEF. The Contractor 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 Contractor shall not install any application or other software on any UNICEF device, network or system. The Contractor represents and warrants to UNICEF that Works and Deliverables provided under the Contract shall not contain any Disabling Code, and that UNICEF shall not otherwise receive from the Contractor 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 Contractor, 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 Works without the presence of Disabling Codes; and (c) as needed, remedy any Defects in the Works caused by the Disabling Code and accelerate the Works such that no delay is caused by the Disabling Code, at the Contractor's cost.

In the event of any Security Incident, the Contractor shall, as soon as possible following the Contractor's discovery of such Security Incident and at its sole cost and expense: (a) notify UNICEF of such Security Incident and of the Contractor'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 Works. The Contractor shall keep UNICEF reasonably informed of the progress of the Contractor's implementation of such damage mitigation and remedial actions. The Contractor, 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 Contractor fails to resolve, to UNICEF's reasonable satisfaction, any such Security Incident, UNICEF can terminate the Contract with immediate effect.

The Contractor shall impose the same requirements relating to data protection and security as are imposed upon the Contractor itself by this clause 14 of the Contract, on the Personnel and Affiliates and shall remain responsible for compliance with such requirements by the Personnel and/or Affiliates.

15. ANTI-CORRUPTION AND ETHICAL STANDARDS

Without limiting the Contractor's obligations under or in connection with this Contract, the Contractor 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 Contractor 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 Contractor shall immediately disclose to UNICEF if the Contractor, 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 Contractor, the Personnel and/or the Affiliates. If UNICEF becomes aware of any Unusual Commercial Expenses, the Contract may be terminated by UNICEF.

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

The Contractor represents and warrants that:

- (a) neither the Contractor nor any of its Affiliates is engaged, directly or indirectly, (i) 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 (ii) in the manufacture, sale, distribution, or use of anti-personnel mines or components utilised in the manufacture of anti-personnel mines;
- (b) 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 Contractor to perform any works and/or services under the Contract, including without limitation, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent; and
- (c) it has taken and shall take all appropriate measures to prohibit the Personnel including its employees or other persons engaged by the Contractor, from exchanging any money, goods, materials, 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 Contractor 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 15.

16. CONFLICT OF INTEREST

The Contractor shall refrain from making any public statements concerning the project or Works 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 Contractor’s independence or that of the Personnel.

The Contractor shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of its obligations under 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 Contractor to prevent or avoid any breach of this clause 16. The Contractor shall ensure that the Personnel is not placed in a situation which could give rise to conflict of interests. The Contractor shall replace, immediately and without compensation from UNICEF, any Personnel exposed to any potential conflict of interest.

The Contractor shall after the conclusion or termination of the Contract, limit its role in connection with the Project to the provision of Works provided prior to the conclusion or termination of this Contract. Except with the written permission of UNICEF, the Contractor 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 Contractor 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 Contractor, or shall be offered by or on behalf of the Contractor, any direct or indirect benefit in connection with the Contract and/or the award of the Contract to the Contractor, 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 Contractor 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 Contractor, 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 Contractor and the selection and awarding of sub-contracts by the Contractor), 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 Contractor shall inform UNICEF immediately as soon as it becomes aware of any breach or potential breach of this Clause 16.

17. CODE OF CONDUCT AND POLICIES

The Contractor shall at all times act loyally and impartially and as a faithful adviser to UNICEF in accordance with any applicable rules and/or code of conduct and with appropriate discretion. The Contractor warrants and represents that it has not and shall not collude with any other contractors, any consultants and/or the Engineer 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 Contractor represents and undertakes that it has reviewed the Policies. The Contractor shall (and shall ensure that its 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 Contractor 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.

18. PUBLICATION

The Contractor 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.

19. SOCIAL AND ENVIRONMENTAL RESPONSIBILITY

The Contractor 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/or
- the Framework for Advancing Environmental and Social Sustainability in the United Nations System (UN EMG 2012).