



GENERAL TERMS AND CONDITIONS

CONTRACTS FOR THE PROVISION OF GOODS AND SERVICES

1 LEGAL STATUS OF THE PARTIES: The Universal Postal Union (hereinafter "the UPU") and the Contractor shall also each be referred to as a "Party" hereunder, and:

1.1 Pursuant, *inter alia*, to the UPU Constitution, the Agreement on Privileges and Immunities of the United Nations, the Convention on the Privileges and Immunities of the Specialized Agencies, as well as any other conventions and laws granting and/or recognizing such privileges, immunities and facilities to the UPU and its officials, the UPU has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes.

1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* the UPU, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2 RESPONSIBILITY FOR PERSONNEL: To the extent that the Contract involves the provision of any services to the UPU by the Contractor's officials, employees, agents, subcontractors and other representatives (collectively, the Contractor's "personnel"), the following provisions shall apply:

2.1 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

2.2 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of the UPU, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.

2.3 At the option of and in the sole discretion of the UPU:

2.3.1 the qualifications of personnel proposed by the Contractor (e.g. a curriculum vitae) may be

reviewed by the UPU prior to such personnel's performing any obligations under the Contract;

2.3.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of the UPU prior to such personnel's performing any obligations under the Contract; and,

2.3.3 after it has reviewed the qualifications of such Contractor's personnel, in accordance with Articles 2.3.1 and 2.3.2 above, the UPU may reasonably refuse to accept any such personnel.

2.4 Requirements specified in the Contract regarding the number or qualifications of the Contractor's personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:

2.4.1 The UPU may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's personnel; such request shall not be unreasonably refused by the Contractor.

2.4.2 Any of the Contractor's personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of the UPU, which shall not be unreasonably withheld.

2.4.3 The withdrawal or replacement of the Contractor's personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.

2.4.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

2.4.5 Any request by the UPU for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and the UPU shall not bear any liability in respect of such withdrawn or replaced personnel.

2.4.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with UPU officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

2.5 Nothing in articles 2.2, 2.3 and 2.4, above, shall be construed to create any obligations on the part of the UPU with respect to the Contractor's personnel assigned to perform work under the Contract, and

- such personnel shall remain the sole responsibility of the Contractor.
- 2.6 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of the UPU shall:
- 2.6.1 undergo or comply with security screening requirements made known to the Contractor by the UPU, including but not limited to, a review of any criminal history;
- 2.6.2 when within UPU premises or on UPU property, display such identification as may be approved and furnished by the UPU security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to the UPU for cancellation.
- 2.7 Not less than one working day after learning that any of Contractor's personnel who have access to any UPU premises have been charged by the competent authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform the UPU about the particulars of the charges then known and shall continue to inform the UPU concerning all substantial developments regarding such charges.
- 2.8 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UPU premises or on UPU property shall be confined to areas authorized or approved by the UPU. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UPU premises or on UPU property without appropriate authorization from the UPU.
- 3 ASSIGNMENT:**
- 3.1 Except as provided in article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the UPU. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the UPU. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of the UPU. Any such unauthorized delegation, or attempt to do so, shall not be binding on the UPU.
- 3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, *provided that:*
- 3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; and,
- 3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; and,
- 3.2.3 the Contractor promptly notifies the UPU about such assignment or transfer at the earliest opportunity; and,
- 3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to the UPU following the assignment or transfer.
- 4 SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of the UPU. The UPU shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the UPU reasonably considers is not qualified to perform obligations under the Contract. The UPU shall have the right to require any subcontractor's removal from UPU premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract, and the Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.
- 5 PURCHASE OF GOODS:** To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to any purchases of goods under the Contract:
- 5.1 **DELIVERY OF GOODS:** The Contractor shall hand over or make available the goods, and the UPU shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to the UPU such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to the UPU in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by the UPU.
- 5.2 **INSPECTION OF THE GOODS:** If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify the UPU when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, the UPU or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to the UPU or its designated

- inspection agents at no charge therefor. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.
- 5.3 **PACKAGING OF THE GOODS:** The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by the UPU as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.
- 5.4 **TRANSPORTATION & FREIGHT:** Unless otherwise specified in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that the UPU receives all necessary transport documents in a timely manner so as to enable the UPU to take delivery of the goods in accordance with the requirements of the Contract.
- 5.5 **WARRANTIES:** Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of the UPU stated in or arising under the Contract, the Contractor warrants and represents that:
- 5.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;
- 5.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide the UPU with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;
- 5.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;
- 5.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;
- 5.5.5 The goods are new and unused;
- 5.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by the UPU in accordance with the Contract;
- 5.5.7 During any period in which the Contractor's warranties are effective, upon notice by the UPU that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse the UPU for the purchase price paid for the defective goods; and,
- 5.5.8 The Contractor shall remain responsive to the needs of the UPU for any services that may be required in connection with any of the Contractor's warranties under the Contract.
- 5.6 **ACCEPTANCE OF GOODS:** Under no circumstances shall the UPU be required to accept any goods that do not conform to the specifications or requirements of the Contract. The UPU may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall the UPU be obligated to accept any goods unless and until the UPU has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that the UPU shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until the UPU in fact provides such written acceptance. In no case shall payment by the UPU in and of itself constitute acceptance of the goods.
- 5.7 **REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to the UPU under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, the UPU, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from the UPU of such rejection or refusal to accept the goods, the Contractor shall, in sole option of the UPU:
- 5.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by the UPU; or,
- 5.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; or,
- 5.7.3 replace the goods with goods of equal or better quality; and,
- 5.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to the UPU.
- 5.8 In the event that the UPU elects to return any of the goods for the reasons specified in article 5.7, above, the UPU may procure the goods from another source. In addition to any other rights or remedies available to the UPU under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and the UPU shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

5.9 **TRANSFER OF OWNERSHIP:** The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's charge or other rights, including any liens or security interests. Unless otherwise expressly provided in the Contract, ownership of the goods shall pass from the Contractor to the UPU upon delivery of the goods and their acceptance by the UPU in accordance with the requirements of the Contract.

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

6 INDEMNIFICATION:

6.1 The Contractor shall indemnify, defend, and hold and save harmless, the UPU, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the UPU, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

6.1.1 allegations or claims that the possession of or use by the UPU of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the UPU under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefore, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or,

6.1.2 any acts or omissions of the Contractor, or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation.

6.2 The indemnity set forth in article 6.1.1, above, shall not apply to:

6.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by the UPU directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; or

6.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof

furnished under the Contract if the UPU or another party acting under the direction of the UPU made such changes.

6.3 In addition to the indemnity obligations set forth in this article 6, the Contractor shall be obligated, at its sole expense, to defend the UPU and its officials, agents and employees, pursuant to this article 6, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

6.4 The UPU shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defence of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defence of the privileges and immunities of the UPU or any matter relating thereto, for which only the UPU itself is authorized to assert and maintain. The UPU 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.

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

6.5.1 procure for the UPU the unrestricted right to continue using such goods or services provided to the UPU;

6.5.2 replace or modify the goods or services provided to the UPU, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; or,

6.5.3 refund to the UPU the full price paid by the UPU for the right to have or use such goods, property or services, or part thereof.

7 INSURANCE AND LIABILITY:

7.1 The Contractor shall pay the UPU promptly for all loss, destruction, or damage to the property of the UPU caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

7.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

7.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

- 7.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
- 7.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,
- 7.2.4 such other insurance as may be agreed upon in writing between the UPU and the Contractor.
- 7.3 The Contractor's liability policies shall also cover subcontractors and all defence costs and shall contain a standard "cross liability" clause.
- 7.4 The Contractor acknowledges and agrees that the UPU accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.
- 7.5 Except for the workers' compensation insurance or any self-insurance programme maintained by the Contractor and approved by the UPU, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:
- 7.5.1 name the UPU as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
- 7.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against the UPU;
- 7.5.3 provide that the UPU shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,
- 7.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to the UPU.
- 7.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 7.7 Except for any self-insurance programme maintained by the Contractor and approved by the UPU for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to the UPU. Prior to the commencement of any obligations under the Contract, the Contractor shall provide the UPU with evidence, in the form of certificate of insurance or such other form as the UPU may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. The UPU reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance programme descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of article 7.5.3, above, the Contractor shall promptly notify the UPU concerning any cancellation or material change of insurance coverage required under the Contract.
- 7.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.
- 7.9 In all cases, the liability of either Party for loss of any anticipated revenue or any other indirect or consequential damages shall be excluded.
- 8 LIENS AND RIGHTS OF THIRD PARTIES:** The Contractor shall not cause or permit any lien by any person to be placed on file or to remain on file in any public office or on file with the UPU against any monies due to the Contractor or that may become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor or the UPU.
- 9 EQUIPMENT FURNISHED BY THE UPU TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by the UPU to the Contractor for the performance of any obligations under the Contract shall rest with the UPU, and any such equipment shall be returned to the UPU at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to the UPU, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear, and the Contractor shall be liable to compensate the UPU for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.
- 10 COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:**
- 10.1 Except as is otherwise expressly provided in writing in the Contract, the UPU shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which the Contractor has developed for the UPU under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the UPU.
- 10.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or

- may have developed or acquired, independently of the performance of its obligations under the Contract, the UPU does not and shall not claim any ownership interest thereto, and the Contractor grants to the UPU a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract.
- 10.3 At the request of the UPU, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the UPU in compliance with the requirements of the applicable law and of the Contract.
- 10.4 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by the Contractor under the Contract shall be the property of the UPU, shall be made available for use or inspection by the UPU at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UPU authorized officials on completion of work under the Contract.
- 11 PUBLICITY, AND USE OF THE NAME, EMBLEM, INITIALS OR OFFICIAL SEAL OF THE UPU:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the UPU, nor shall the Contractor, in any manner whatsoever use the name, emblem, initials or official seal of the UPU, or any abbreviation of the name of the UPU in connection with its business or otherwise without the written permission the UPU.
- 12 CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION:** Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party ("Discloser") to the other Party ("Recipient") during the course of performance of the Contract, and that is designated as confidential ("Information"), shall be held in confidence by that Party and shall be handled as follows:
- 12.1 The recipient ("Recipient") of such Information shall:
- 12.1.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar Information that it does not wish to disclose, publish or disseminate; and,
- 12.1.2 use the Discloser's Information solely for the purpose for which it was disclosed.
- 12.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this article 12, the Recipient may disclose Information to:
- 12.2.1 any other party with the Discloser's prior written consent; and,
- 12.2.2 the Recipient's employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Information for purposes of performing obligations under the Contract, *provided that*, for these purposes a controlled legal entity means:
- 12.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
- 12.2.2.2 any entity over which the Party exercises effective managerial control.
- 12.3 The Contractor may disclose Information to the extent required by law, *provided that*, subject to and without any waiver of the privileges and immunities of the UPU, the Contractor will give the UPU sufficient prior notice of a request for the disclosure of Information in order to allow the UPU to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
- 12.4 The UPU may disclose Information to the extent as required pursuant to its Acts, or pursuant to other UPU resolutions.
- 12.5 The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.
- 12.6 These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.
- 13 FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:**
- 13.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of *force majeure* or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of *force majeure*. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting *force majeure* shall take such action as it reasonably considers to be appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.
- 13.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, the UPU shall have the right to suspend

- or terminate the Contract on the same terms and conditions as are provided for in article 14, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the UPU shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.
- 13.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which the UPU is engaged in operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.
- 14 TERMINATION:**
- 14.1 Either Party may terminate the Contract in whole or in part, upon thirty (30) days' notice in writing, stating the reasons, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with article 17 "Settlement of Disputes," below, shall not be deemed to be "reasons" for or otherwise to be in itself a termination of the Contract.
- 14.2 The UPU may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of the UPU applicable to the performance of the Contract or the funding of the UPU applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) days' advance written notice to the Contractor, the UPU may terminate the Contract without having to provide any justification therefor.
- 14.3 In the event of any termination of the Contract, upon receipt of notice of termination that has been notified by the UPU, the Contractor shall, except as may be directed by the UPU in the notice of termination or otherwise in writing:
- 14.3.1 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;
- 14.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
- 14.3.3 place no further subcontracts or orders for materials, services, or facilities, except as the UPU and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
- 14.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
- 14.3.5 transfer ownership and deliver to the UPU the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
- 14.3.6 deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to the UPU thereunder;
- 14.3.7 complete performance of the portion of the Contract not terminated; *and*,
- 14.3.8 take any other action that may be necessary, or that the UPU may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which the UPU has or may be reasonably expected to acquire an interest.
- 14.4 In the event of any termination of the Contract, the UPU shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, the UPU shall not be liable to pay the Contractor except for those goods delivered and services provided to the UPU in accordance with the terms of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from the UPU or prior to the Contractor's tendering of notice of termination to the UPU.
- 14.5 The UPU may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- 14.5.1 the Contractor 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;
- 14.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;
- 14.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;
- 14.5.4 a Receiver is appointed on account of the insolvency of the Contractor;
- 14.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,
- 14.5.6 the UPU reasonably determines that the Contractor has become 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.
- 14.6 Except as prohibited by law, the Contractor shall be bound to compensate the UPU for all damages and costs, including, but not limited to, all costs incurred by the UPU in any legal or non-legal proceedings, as a result of any of the events specified in article 14.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform the UPU of the occurrence of any of the events specified in article 14.5, above, and shall provide the UPU with any information pertinent thereto.

14.7 The provisions of this article 14 are without prejudice to any other rights or remedies of the UPU under the Contract or otherwise.

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

16 NON-EXCLUSIVITY: Unless otherwise specified in the Contract, the UPU shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the UPU shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

17 SETTLEMENT OF DISPUTES:

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

17.2 **ARBITRATION:** Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, expiration or invalidity thereof, unless settled amicably under article 17.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining.

17.3 The number of arbitrators shall be one (1). If the Parties are unable to designate an arbitrator within thirty (30) days of receipt of the notification of a request for arbitration, the arbitrator shall, at the request of one of the Parties, be appointed by the President of the Permanent Court of Arbitration in the Hague, the Netherlands.

17.4 The arbitrator's ruling shall be final and binding, and no appeal to a court or any other jurisdiction shall be allowed.

17.5 The Agreement and any amendment thereto shall be governed by general principles of law to the exclusion of any single national system of law. Such general principles of law shall include the UNIDROIT General Principles of International Commercial Contracts (2010). The place of arbitration shall be Geneva, Switzerland, and the language of arbitration shall be English or French.

18 PRIVILEGES AND IMMUNITIES: Nothing in or relating to the Contract shall be deemed a waiver,

express or implied, of any of the privileges and immunities of the UPU.

19 TAX EXEMPTION:

19.1 Pursuant to article III, Section 9 of the Convention on the Privileges and Immunities of the Specialized Agencies, the UPU is exempt from all direct taxes and from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of the UPU from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the UPU to determine a mutually acceptable procedure.

19.2 The Contractor authorizes the UPU to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with the UPU prior to paying such taxes, duties or charges and where the UPU has, in each case, expressly authorized the Contractor to settle them, subject to submission of a written claim. In such cases, the Contractor shall provide the UPU with written evidence that these taxes, duties or charges have been paid and that such payment was duly authorized. The UPU shall reimburse the Contractor for the taxes, duties or charges which it authorized the Contractor to pay subject to submission of a written claim.

20 MODIFICATIONS:

20.1 No modification or change in the Contract shall be valid and enforceable against the UPU unless provided by a valid written amendment to the Contract signed by both Parties.

20.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with article 20.1, above.

20.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against the UPU nor in any way shall constitute an agreement by the UPU thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with article 20.1, above.

21 AUDITS AND INVESTIGATIONS:

21.1 Each invoice paid by the UPU shall be subject to a post-payment audit by auditors, whether internal or external, of the UPU or by other authorized and qualified agents of the UPU at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract.

21.2 The UPU may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to

- performance of the Contract at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract.
- 21.3 The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the UPU access to the Contractor's premises at reasonable times and on reasonable conditions. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the UPU hereunder.
- 22 **ESSENTIAL TERMS:** The Contractor acknowledges and agrees that each of the provisions in articles 23 to 31 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the UPU to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.
- 23 **SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to the UPU in connection with the performance of its obligations under the Contract. Should any authority external to the UPU seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the UPU and provide all reasonable assistance required by the UPU. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of the UPU, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the UPU.
- 24 **OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of the UPU any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof.
- 25 **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract.
- 26 **CHILD LABOR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.
- 27 **MINES:** The Contractor warrants and represents that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.
- 28 **SEXUAL EXPLOITATION:**
- 28.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor 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 Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favours or activities, or from engaging any sexual activities that are exploitive or degrading to any person.
- 28.2 The UPU shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.
- 29 **ENVIRONMENT:** The Contractor shall take the appropriate steps to perform the Contract in a manner that is respectful of the environment, undertake initiatives to promote greater environmental responsibility, and encourage the development and diffusion of environmentally-friendly technologies.
- 30 **CORRUPTION:** The Contractor shall refrain from any form of corruption, including extortion and bribery.