

## General Conditions of Contract

---

### 1. DEFINITIONS

- (a) In these general conditions of contract the terms beginning with a capital letter shall have the meaning as defined in the Contract.
- (b) “Services” means all services to be rendered under the Contract.
- (c) “Goods” shall mean all goods, equipment, materials and/or other supplies to be provided under the Contract.
- (d) “Taxes” shall mean all direct and indirect taxes (including value added tax, general sales tax or goods and services tax), assessments, fees, customs duties, liens and charges in as much as they are levied in conclusion or implementation of the Contract, including customs restrictions and charges of similar nature in respect of articles imported or exported for the Commission’s official use.

### 2. LEGAL STATUS

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis the Commission. Neither the Contractor and any subcontractor, nor their personnel shall be considered to be an employee or an agent of the Commission.

### 3. ASSIGNMENT

The Contractor shall not assign, transfer, pledge or make other disposition of the Contract or any part thereof, or any of the Contractor’s rights, claims or obligations under the Contract except with the prior written consent of the Commission.

### 4. SUBCONTRACTING

In the event the Contractor requires the services of one or more subcontractors, the Contractor shall obtain the prior written approval and clearance of the Commission for such subcontractor(s). The Commission’s approval of a subcontractor shall not relieve the Contractor of any of his obligations under the Contract, and the terms of any subcontract shall be subject to and in conformity with the provisions of the Contract.

### 5. SOURCE OF INSTRUCTIONS

- (a) The Contractor shall neither seek nor accept instructions from any authority external to the Commission in connection with the performance of its obligations under the Contract. The Contractor shall refrain from any action which may adversely affect the Commission and shall fulfil its commitments with the fullest regard to the interests of the Commission.
- (b) While present at the Commission’s premises, personnel of the Contractor shall, at all times, obey and conform to all requests and instructions of the Commission’s officials and the United Nations Security Staff.

### 6. CONTRACTOR’S RESPONSIBILITY FOR EMPLOYEES

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for the performance under the Contract, reliable individuals who will perform effectively in the implementation of the Contract, respect the local laws and customs and conform to a high standard of moral and ethical conduct.

### 7. ASSIGNMENT OF PERSONNEL

- (a) The Contractor shall not replace or withdraw any personnel referred to in the Contract for the performance of the Services without the prior written approval of the Commission or unless requested by the Commission.
- (b) Prior to assignment, replacement or withdrawal of personnel for the performance of the Services, the Contractor shall submit to the Commission for its consideration, the curriculum vitae or detailed justification to permit evaluation by the Commission of the impact which such assignment, replacement or withdrawal would have on the Services.
- (c) In the event of withdrawal of personnel, all costs and additional expenses resulting from the replacement, for whatever reasons, of any of the Contractor’s personnel shall be for the account of the Contractor. Such withdrawal shall not be considered as termination in part or in whole of the Contract.

## 8. CONFLICT OF INTEREST

No employee, officer, adviser, agent and/or subcontractor of the Contractor assigned to perform Services under the Contract shall engage, directly or indirectly, in any business, profession or occupation connected or related to the Services or Goods to be provided under the Contract if this constitutes a conflict of interest.

## 9. INSURANCES

- (a) The Contractor shall provide and thereafter maintain appropriate insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with the Contract.
- (b) The Contractor shall provide and thereafter maintain insurance against all risk in respect of its property and any equipment used for the execution of the Contract.
- (c) The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death, bodily injury, loss of and damage to property arising from any operations carried out by the Contractor in performing its obligations in connection with the Contract or from operation of any vehicles, boats, airplanes and other equipment owned or leased by the Contractor or its agents, servants, employees or subcontractors.
- (d) Except for insurance mentioned in paragraph (a), the insurance policies under this clause shall:
  - (i) Name the Commission as additional beneficiary;
  - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against the Commission.
- (e) The Contractor shall, upon request, provide the Commission with satisfactory evidence of the insurance required under the Contract.
- (f) Any amounts not insured, not recovered from or not claimed by the insurer shall be borne by the Contractor.
- (g) Information concerning reduction of coverage shall be furnished by the Contractor to the Commission with at least thirty (30) days prior written notice.
- (h) The Contractor undertakes that provisions to the same effect as the provisions in sub-clauses (a) through (c) above will be inserted in all subcontracts made in performance of the Contract, except sub-contracts exclusively for furnishing Goods.

## 10. ENCUMBRANCES/LIENS

The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file in any public office or on file with the Commission against any monies due or to become due for any Services or Goods provided under the Contract, or by reason of any other claim or demand against the Contractor.

## 11. OBSERVANCE OF THE LAW

- (a) The Contractor shall comply with all laws, ordinances, rules and regulations, including but not limited to health, environmental and labour laws bearing upon the

performance of its obligations under the terms of the Contract.

- (b) In particular, the Contractor shall comply with the labour laws of the country in which the Services or Goods are to be furnished providing for benefits covering injury or death in the course of employment.

## 12. CONFIDENTIALITY

- (a) All technical, financial or other documentation and data the Contractor compiled for or received from the Commission under the Contract shall be treated as confidential and shall be delivered only to the Commission's authorized officials on completion of the Services or as requested by the Commission.
- (b) Either Party acknowledges that all knowledge and information concerning the other Party that may be acquired in connection with the performance of its obligations under the Contract, including but not limited to, any information relating to its operations and procedures, are confidential and proprietary information of the other Party and it shall receive such confidential and proprietary information of the other Party in confidence and shall not disclose or permit disclosure of any such knowledge or information to any person and/or entity without the prior written consent of the other Party.
- (c) The Contractor shall not, at any time, use such confidential information to its own advantage.
- (d) The restrictions on confidentiality shall not apply to the information which:
  - (i) presently is in the public domain;
  - (ii) hereafter becomes part of the public domain without the other Party's fault;
  - (iii) was in the possession of the other Party at the time of the disclosure, as shown by written evidence;
  - (iv) is disclosed to the other Party at any time hereafter by a third Party.
  - (v) is required to be disclosed to governing bodies, or to governmental authorities to the extent required by law or to obtain needed authorization to perform the Contract or pursuant to reporting requirements imposed by those governing bodies or the government of the State of the Contractor.
- (e) These obligations do not lapse upon satisfactory completion of the Services, delivery of the Goods or termination of the Contract by the Commission.

## 13. LANGUAGES, WEIGHTS AND MEASURES

Unless otherwise specified in the Contract, the English language shall be used by the Contractor in all written communications to the Commission with respect to the Services or Goods to be provided and all documents procured or prepared by the Contractor. The Contractor shall use metric units, except when otherwise specified in the Contract.

## 14. PUBLICITY

- (a) The Contractor shall not advertise or otherwise make public the fact that it is providing or has provided Services and Goods for the Commission. Also, the

Contractor shall not, in any manner whatsoever, use the name, emblem or official seal of the Commission or any abbreviation of the name of the Comprehensive Nuclear-Test-Ban Treaty Organization in connection with its business or otherwise.

- (b) These obligations do not lapse upon satisfactory completion of the Services, delivery of the Goods or termination of the Contract.

**15. OFFICIALS NOT TO BENEFIT/CONTINGENT FEES**

- (a) The Contractor warrants that:
  - (i) No person or selling agency has been employed or retained by it to solicit or secure the Contract upon an agreement or understanding for a commission, percentage, brokerage, contingent fee or retainer, except regular employees or bona fide and officially established commercial or selling agencies maintained by the Contractor for the purpose of securing business;
  - (ii) No official or servant or retired employee of the Commission who is not a regular employee of the Contractor, has been or shall be admitted by the Contractor to any direct or indirect benefit arising from the Contract or the award thereof.
- (b) In case of breach by the Contractor of the warranties referred to in previous clauses, the Commission shall have the right to deduct from the Contract Price, or otherwise recover from the Contractor, the full amount of any such commission, percentage, brokerage, contingent fee or retainer so paid.

**16. INTELLECTUAL PROPERTY AND OTHER PROPRIETARY RIGHTS**

- (a) Except to the extent the Contractor has granted a license to the Commission, the Commission, shall be entitled to all intellectual property, including but not limited to copyrights, patents and trademarks, with regard to products, documents or other materials which bear a direct relation to or are produced or collected under the Contract. The Contractor shall take all necessary steps, prepare and process all necessary documents and assist in securing such property rights and transferring them to the Commission and/or to the government where the Services or Goods are to be provided, in compliance with the requirements of the applicable law.
- (b) The Contractor declares that it does not know of any intellectual property rights of third parties, which might be infringed in the execution of the Contract. Should, contrary to the Contractor’s expectation, claims be raised against the Commission charging it with infringement of intellectual property rights, the Contractor shall hold harmless the Commission and shall indemnify it to the full extent of any damages or awards arising from such claims. This obligation of the Contractor shall continue to be in full force and effect up to the expiration of such intellectual property rights.
- (c) The Commission shall give the Contractor due notice in writing of any charges of infringement brought against the Commission and of the filing of any suit for

infringement of intellectual property rights of third parties due to the execution of the Contract, and, without prejudice to the immunity enjoyed by the Commission as an international organization from every form of legal process, including enforcement and execution, the Commission shall give the Contractor the opportunity to defend the Commission against the said suit at its discretion and shall not, without the Contractor’s consent in writing, make any admission or consent to any claim of any third party, which might be prejudicial to the Contractor’s position.

**17. DEFAULT BY THE CONTRACTOR**

- (a) In case the Contractor fails to fulfil its obligations and responsibilities under the Contract and provided the Contractor has not remedied such failure(s) within thirty (30) days of having been given written notification by the Commission of the nature of the failure(s), the Commission may, at its entire discretion and without prejudice to its right to withhold payment(s), hold the Contractor in default under the Contract.
- (b) When the Contractor is thus in default, the Commission may, by giving written notice to the Contractor, terminate the Contract as a whole or such part or parts thereof in respect of which the Contractor is in default. Upon such notice, the Commission shall have the right to seek completion, at the Contractor’s expense, of that part or those parts of the Contract with respect to which the Contractor is in default.
- (c) The Contractor shall, in this case, be solely responsible for any reasonable costs of completion of the Services and/or delivery of Goods, including such costs, which are incurred by the Commission over and above the originally agreed Contract Price.

**18. WITHHOLDING OF PAYMENT**

- (a) The Commission may withhold any payment to the Contractor or, on account of subsequently discovered evidence, nullify the whole or part of any payment approval theretofore given, to such an extent as may be necessary to protect the Commission from loss under the Contract on account of:
  - (i) The Contractor’s failure to carry out its obligations or to make adequate progress with the obligations, except for failure arising out of force majeure;
  - (ii) The Contractor’s failure to remedy unsatisfactory performance, when such failure has been drawn to his attention by the Commission;
  - (iii) The Contractor’s failure to submit on time the reports required.
- (b) The withholding by the Commission of any interim payment shall not affect the Contractor’s obligation to continue performance of his obligations under the Contract.
- (c) No interest shall accrue on payments eventually withheld by the Commission in application of the stipulations of this paragraph.

## 19. LIQUIDATED DAMAGES

Subject to Clause 20 below (force majeure), if the Contractor fails to deliver any or all of the Services and/or Goods within the latest time period(s) specified in the Contract, the Commission may, without prejudice to its other remedies under the Contract, deduct from the Contract Price as liquidated damages, a sum equivalent to 0.2 per cent of the portion of the Contract Price for the delayed Services and/or Goods for each working day of delay until actual performance, up to a maximum of sixty (60) working days. The recovery by the Commission of proven damages shall not be excluded.

## 20. FORCE MAJEURE

- (a) Force majeure as used herein shall mean acts of God, industrial disturbances, acts of the public enemy, civil disturbances, explosions and any other similar cause of equivalent force not caused by nor within the control of either party and which neither party is able to overcome.
- (b) As soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the Commission of such force majeure if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract.
- (c) In this event, the following provisions shall apply:
  - (i) The obligations and responsibilities of the Contractor under the Contract shall be suspended to the extent of its inability to perform them and for as long as such inability continues;
  - (ii) The term of the Contract shall be extended for a period equal to the period of suspension taking, however, into account any special conditions which may cause the time for completion of the obligations to be different from the period of suspension;
  - (iii) If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Contract, the Commission shall have the right to terminate the Contract on the same terms and conditions as are provided for in the Termination Clause of the Contract, except that the period of notice may be seven (7) days instead of thirty (30) days;
  - (iv) For the purpose of the preceding sub-clause, the Commission may consider the Contractor permanently unable to perform in case of any period of suspension in excess of ninety (90) days. Any such period of ninety (90) days or less shall be deemed temporary inability to perform.

## 21. INSOLVENCY AND BANKRUPTCY

Should the Contractor be insolvent, adjudged bankrupt, or should the Contractor make a general assignment for the benefit of its creditors, or should a receiver be appointed on account of the Contractor's insolvency, the Commission may, without prejudice to any other right or remedy it may have under the terms of the Contract, terminate the Contract

forthwith by giving the Contractor written notice of such termination.

## 22. INDEMNIFICATION

The Contractor shall indemnify, hold and save harmless and defend at its own expense the Commission, its officers, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including cost and expenses arising out of acts or omissions of the Contractor or its employees or subcontractors in the performance of the Contract. This requirement shall extend, inter alia, to claims or liabilities in the nature of workers' compensation and to claims or liabilities pertaining to intellectual property rights. The obligations under this clause do not lapse upon termination of the Contract.

## 23. AMICABLE SETTLEMENT

The parties shall use their best efforts to settle amicably through negotiation any dispute, controversy or claim arising out of, or relating to, the Contract or the breach, termination or invalidity thereof. If the parties cannot reach such amicable settlement through negotiations, the matter shall first be referred to conciliation, by a request by either party for conciliation procedures. The conciliation shall take place in accordance with the United Nations Commission on International Trade Law (UNCITRAL) Conciliation Rules then prevailing, or according to such other procedure as may be agreed between the parties, within a time period of ninety (90) days. There shall be one conciliator. The conciliation shall be in Vienna, Austria, and it shall be conducted in the English language.

## 24. ARBITRATION

- (a) In the event of a failure to reach an amicable settlement in accordance with Clause 23 above (Amicable Settlement), any dispute arising out of the interpretation or application of the terms of the Contract or any breach thereof shall be settled in accordance with the arbitration rules established by UNCITRAL as at present in force. The number of arbitrators shall be one. The arbitration shall be in Vienna, Austria, and it shall be conducted in the English language.
- (b) The arbitrator shall take into account the internationally recognized general principles of commercial transactions. The arbitrator shall have no authority to award punitive damages, nor to award interest in excess of five (5) per cent, and any such interest shall be simple interest only. The parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute.

## 25. 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 Commission and its employees.

**25(a). TAX EXEMPTION**

In principle, the Commission is exempt from all Taxes. Since the arrangement under which such exemption is respected varies from country-to-country, the Contractor shall collaborate with the Commission to achieve Tax exemption at source or to pursue reimbursement of Taxes paid by the Commission, as the case may be.

**26. TERMINATION**

The Commission may terminate the Contract in whole or in part, and at any time, upon thirty (30) days' notice of termination to the Contractor. In the event such termination is not caused by the Contractor's negligence or fault, the Commission shall be liable to the Contractor for payment in respect of Services already satisfactory accomplished or Goods delivered and accepted and in conformity with the terms of the Contract, for necessary terminal expenses of the Contractor, and for the cost of such urgent work as is essential and as the Contractor is asked by the Commission to complete. The Contractor shall keep expenses at a minimum and shall not undertake any forward commitment from the date of receipt of the Commission's notice of termination.

**27. GOODS**

In the event that the Contract requires the Contractor to supply Goods, Clauses 28-35 shall apply in addition to the above.

**28. WARRANTY**

- (a) The Contractor warrants that the Goods, including packaging, conform to the specifications for the Goods ordered under the Contract and are fit for the purpose for which such Goods are ordinarily used and for purposes expressly made known to the Contractor by the Commission, and are new and free from defects in design, workmanship and materials.
- (b) This warranty shall remain valid for twenty-four (24) months after the Goods or any part thereof have been delivered and accepted, whichever is later, unless the Contractor has granted a longer period. Should the Commission transfer the title of the Goods to a third party during the warranty period, the right to enjoy the warranty shall be transferable to the new title-holder.
- (c) If, during the warranty period mentioned in sub-clause (b) above, the Goods or any part thereof are found to be defective or not in conformity with the specifications under the Contract, the Contractor shall, upon notification, promptly and at its own expense correct all such defects and non-conformities. If these defects and non-conformities cannot be corrected, the Commission shall have the right, at the Contractor's expense, to either demand replacement of the defective item, or receive appropriate reimbursement, or have the defective item repaired or otherwise procured from a third party.

**29. INSPECTIONS AND TESTS**

- (a) The Commission shall have the right to inspect and/or to test the Goods to confirm their conformity to the technical specifications. The technical specifications shall specify what inspections and tests the Commission requires.
- (b) The inspections and tests may be conducted on the premises of the Contractor or its subcontractor(s), at a point of delivery designated by the Commission and/or at the Goods' final destination. The Contractor shall give all reasonable facilities and assistance-including drawings and production data-to the Commission at no charge to the Commission.
- (c) Should any inspected or tested Goods fail to conform to the technical specifications, the Commission reserves the right to reject them and the Contractor shall either replace the rejected Goods or make all alterations necessary to meet specification requirements free of cost to the Commission.
- (d) The Commission's right to inspect, test and, where necessary, reject the Goods after the Goods' arrival at the point of delivery designated by the Commission or at the Commission's offices, shall in no way be limited or waived by reason of the Goods' having previously been inspected, tested and passed by the Commission.
- (e) Nothing in this Section on Inspections and Tests shall in any way release the Contractor from any warranty or other obligations under the Contract.
- (f) All equipment/material supplied under the Contract may be subject to pre-shipment inspection by a third party to be specified by the Commission. The Contractor is not liable for cost of this inspection.

**30. PACKING**

The Contractor shall comply or ensure compliance with the following provisions concerning packing:

- (a) The Goods shall be packed as is required to prevent their damage or deterioration during transit to their final destination. The packing shall be sufficient to withstand, without limitation, rough handling during transit.
- (b) In the case of a cross-border shipment, the Goods shall have appropriate export packing. If necessary, all cases/crates must be wrapped inside with heavy-duty plastic lined paper, should be steel-strapped and must be able to withstand tough handling. Skids for truck handling are imperative if the gross weight is more than 30 kilograms.
- (c) The consignment shall be marked and shipped as per address shown on the Purchase Order Form.
- (d) Neither partial delivery nor transshipment shall be made unless specifically agreed by the Commission in writing.
- (e) Each case/crate/package shall carry a consecutive number, dimensions, volume, and weight (i.e. Case No. X of Y cases, A x B x C cm, E m<sup>3</sup>, D Kg.) and shall be marked as follows:

EQUIPMENT FOR  
THE PREPARATORY COMMISSION FOR THE  
COMPREHENSIVE NUCLEAR-TEST-BAN  
TREATY ORGANIZATION.  
[point of delivery]

PURCHASE NO. \_\_\_\_\_  
GROSS WEIGHT \_\_\_\_\_  
NET WEIGHT \_\_\_\_\_

- (f) Markings shall be done with weatherproof materials. All non-containerized Goods shall be shipped below deck.
- (g) Each case/crate/carton shall carry (outside) a copy of the packing list describing the contents of the case/crate/carton. Outside Case No. 1 should be attached with invoice covering the actual delivery. The accompanying papers must be made out in the English language.
- (h) Prior to delivery, a fax (or a letter by courier service) shall be sent to the consignee, if any, advising of the following:
  - ◆ purchase order/Contract number;
  - ◆ waybill number or equivalent reference number of the shipment (if any);
  - ◆ number of boxes/cartons/crates/etc.;
  - ◆ estimated time of departure (ETD);
  - ◆ point of departure and name of freight carrier;
  - ◆ estimated time of arrival (ETA) to final destination.
- (i) The following documents shall be enclosed with the shipment in case of shipping by air:
  - ◆ airway bill;
  - ◆ proforma or commercial invoice;
  - ◆ packing list.
- (j) The above documents are indispensable and must reach the consignee, if any, on time to permit customs clearance and in order to avoid demurrage charges.

### 31. DELIVERY AND TRANSPORTATION

- (a) Delivery of the Goods shall be made by the Contractor in accordance with the terms specified in the Contract, and the Goods shall remain at the risk of the Contractor until delivery has been completed.
- (b) Transport of the Goods to the port of discharge or such other point in the country of destination and/or forwarding to the consignee, if any, (door-to-door) specified in the Contract shall be arranged and paid for by the Contractor and the cost thereof shall be included in the Contract Price.

### 32. TAKE-OVER/HAND-OVER

Upon successful completion of delivery or of installation and a testing and evaluation period, as specified in the Contract, responsibility for the Goods will be handed over to the consignee or other designated entity.

### 33. EXPORT LICENCES

If an export licence or any other governmental authorization is required for the Goods, it shall be the obligation of the Contractor to obtain such licence or governmental authorization. In the event of failure to obtain such licence or authorization within reasonable time, the Commission may declare the Contract null and void.

### 34. SPARE PARTS

In accordance with the Contract, the Contractor may be required to provide any or all of the following materials and notifications pertaining to spare parts manufactured and/or distributed by the Contractor:

- (a) Such spare parts as the Commission may choose to purchase from the Contractor, provided that the Contractor is not relieved of any warranty obligations under the Contract;
- (b) In the event of termination of production of the spare after delivery of the Goods:
  - (i) advance notification to the Commission of the pending termination, in sufficient time to permit the Commission to place a final order;
  - (ii) following such termination, furnishing at no cost to the Commission, the blueprints, drawings and specifications of the spare parts, if and when requested.

### 35. UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS

Questions concerning matters arising under the Contract, but not settled in it, shall be settled in conformity with the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980), which shall be applicable to the Contract. The applicable language version of the Convention shall be the version in which the Contract is written.

### 36. SUSTAINABLE BUSINESS PRACTICES

The Commission requires the Contractor and its personnel to:

- (a) support and respect the protection of internationally proclaimed human rights<sup>1</sup> and to observe the highest standards of ethics and integrity throughout its supply chains.
- (b) abide by the United Nations Supplier Code of Conduct<sup>2</sup>.
- (c) to take appropriate steps, whenever possible to perform its obligations in a manner that takes into account economic, environmental and social considerations.
- (d) certify that they have not and will not engage in harassment or sexual harassment, proscribed practices or any further practice described in Clauses 37, 38, 39, 40

<sup>1</sup> UN Guiding Principles on Business and Human Rights, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>2</sup> Available at <https://www.un.org/Depts/ptd/about-us/un-supplier-code-conduct>.

and 41, during the procurement process and the performance of the Contract.

### 37. PREVENTION OF HARRASSMENT AND SEXUAL HARRASSMENT

- (a) The Commission is committed to providing a professional work environment that upholds the highest standards of equality, respect and dignity for all. In this regard, and without limitation to any other provision contained herein:
- (i) The Contractor shall adhere to zero tolerance for harassment and therefore accepts and agrees to refrain from any conduct which could, in the view of the Commission, meet the definition of harassment and/or sexual harassment. For the avoidance of doubt, “harassment” shall be understood as any improper or unwelcome conduct that might reasonably be expected or be perceived to cause offence or humiliation to another person when such conduct interferes with work, is made a condition of employment, or creates an intimidating, hostile or offensive work environment. “Sexual harassment” shall be understood as harassment of a sexual nature, and the above definition of harassment applies equally to sexual harassment. Sexual harassment may occur between persons of opposite sex or of the same sex.
  - (ii) The Contractor shall take all reasonable and appropriate measures to prevent and deter harassment and sexual harassment or abuse of anyone by its employees, agents, officials or any other persons engaged or controlled by the Contractor to perform the Services.
  - (iii) The Contractor shall promptly report to the Commission any actual, reported or suspected cases of harassment, sexual harassment or abuse of anyone by its employees, agents, officials or any other persons engaged or controlled by the Contractor to perform the Services of which the Contractor becomes aware. Such reports to the Commission may be on a no name basis, if necessary.
  - (iv) In addition to notifying the Commission pursuant to sub-clause (iii) above, on becoming aware of any allegation of harassment, sexual harassment or abuse of anyone, the Contractor shall take all reasonable and appropriate measures to address the matter, including engaging in good faith consultations with the Commission, while ensuring minimum impact and/or disruption of the Services.
- (b) The Contractor acknowledges and agrees that any breach of the provisions of this Clause 37, as determined by the Commission, shall permit the Commission, at its sole discretion, to:
- (i) Request the Contractor to remove, temporarily or permanently, from the relevant assignment, any Contractor’s personnel reported for having committed harassment, sexual harassment or abuse of anyone.
  - (ii) Terminate the Contract, and/or any other agreement, arrangement or partnership concluded by the Commission with the Contractor, immediately upon

written notice to the Contractor, without any liability for termination charges or any other liability of any kind, on the terms and conditions as are provided for in Clause 26 (Termination) above; and/or

- (iii) Exclude the Contractor from participating in any ongoing or future solicitations, and/or entering into any future contractual or collaborative relationships with the Commission and/or suspend the Contractor from the Commissions supplier roster.
- (c) The Commission shall be entitled to report any breach of the provisions of this Clause 37, as determined by the Commission, to the Commission’s governing bodies, other UN agencies and/or donors.

### 38. PROSCRIBED PRACTICES

The Commission requires that the Contractor and its personnel certify that they have not and will not engage in proscribed practices and proscribed conduct during the procurement process and the performance of the Contract. The Commission defines Proscribed Practices as follows:

**Fraudulent practice:** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;

**Corrupt practice** is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

**Coercive practice** is the impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of any party in order to influence the actions of that party;

**Collusive practice** is the proposing or entering into an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

**Unethical practice** is conduct or behaviour that is contrary to the conflict of interest, gifts and hospitality, post-employment provisions or other published requirements of doing business with the Commission;

**Obstructive practice** is any act which deliberately and in an effort to compromise an investigation, destroys, falsifies, alters or conceals information or documents that may be relevant to a fraud and corruption investigation, or material that could become evidence as a result of such investigation; or the making of false statements to investigators during such an investigation.

### 39. CHILD LABOUR

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.

#### 40. MINES

The Contractor represents and warrants 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.

#### 41. TERRORISM

The Contractor shall ensure that none of the funds received from the Commission under the Contract are used, directly or indirectly, to provide support to individuals or entities subject to sanctions or other measures promulgated by the United Nations Security Council and appearing in the Consolidated United Nations Security Council Sanctions List. This provision shall be included in all subcontracts or sub-agreements entered into under the Contract.

#### 42. FULL DISCLOSURE

- (a) The Contractor will immediately notify the Commission upon becoming aware of any Proscribed Practices or other prohibited practices or conduct or suspicion thereof, as per Clauses 37-41, by itself or its personnel during the procurement process or the performance of the Contract. The Contractor will take all appropriate measures to prohibit and prevent its personnel from engaging in Proscribed Practices or any other prohibited conduct, as well as to investigate allegations thereof, or to take corrective action when such a Proscribed Practice or any other prohibited conduct has occurred.
- (b) The Contractor further warrants that it is not the subject of any sanctions, or otherwise identified as ineligible by any government, supranational organization (e.g., European Union), another entity of the United Nations System or multilateral development finance institution. The Contractor will disclose to the Commission if it becomes subject to any sanction or temporary suspension during the term of the Contract. The Contractor recognizes that a breach of this provision constitutes a fraudulent practice.

#### 43. DATA PROTECTION

- (a) **Use of the Commission's data:** Use (including accessing, processing, retention, storage) of the Commission's data is limited to the purposes contained in the Contract and such use will be limited to Contractor's personnel on a "need to know" basis. Use of the Commission's data for internal research, marketing, sales, or promotional purposes is strictly prohibited. Subject to Clause 12 (Confidentiality), the

Contractor will treat the Commission's data as confidential and may neither disclose it nor make it available to any third-party except with the prior written authorization of the Commission.

- (b) **Compliance:** The Contractor confirms that it has a data protection policy in place that meets applicable legal requirements and that it will apply such a policy to the Commission's data, without prejudice to the privileges and immunities of the Commission. The Contractor will implement technical and organisational measures to ensure appropriate protection of the Commission's data, in conformity with the abovementioned requirements and internationally recognised standards and best practices. In addition, the Contractor will:
- (i) at its sole expense and risk, return, delete, or destroy all the Commission's data, including data backups, upon written instruction of the Commission. The Commission will provide a reasonable period of time and take into account the Contractor's legitimate interests, as well as the termination or expiration date of the Contract;
  - (ii) process, retain or store the Commission's data exclusively in countries that are signatories to the Comprehensive Nuclear-Test-Ban Treaty and that ensure adequate legal protection of the Commission's privileges and immunities; and
  - (iii) be liable for any resulting damages or penalties for its failure to comply with its obligations.
- (c) **Data security:** Upon discovery of a data security breach, the Contractor will immediately notify the Commission and undertake at its sole expense to:
- (i) propose immediate remedial actions (including containment);
  - (ii) implement, as directed by the Commission, all necessary damage mitigation and remedial actions;
  - (iii) where applicable, as directed by the Commission, restore the Commission's and end-users' access; and
  - (iv) keep the Commission informed of its progress.
- (d) The Contractor, at its sole expense, will cooperate fully with any Commission investigation, remediation steps and response to a data security breach.

#### 44. ESSENTIAL TERMS

The Contractor acknowledges and agrees that each of the provisions in Clauses 36 to 43 above constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the Commission to terminate the Contract or any other contract the Contractor has with the Commission, immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind. Furthermore, the Commission is entitled to exclude the Contractor from participating in future tenders should the Contractor breach any of the provisions included in Clauses 36 to 43.