

## ANNEX A

### **TERMS AND CONDITIONS OF UNOPS INDIVIDUAL CONTRACTOR AGREEMENT**

Note: In this Annex A, the terms “*the Agreement*” and “*this Agreement*” mean the agreement between the Individual Contractor and UNOPS, as constituted by this Annex A and such other documents as the Parties have agreed. “*Parties*” means the Individual Contractor and UNOPS.

#### **1. DURATION OF AGREEMENT**

**1.1.** Subject to article 1.2 below, this Agreement shall expire without prior notice upon satisfactory completion of the Services (as defined below), unless sooner terminated under the terms and conditions of this Agreement.

**1.2.** The Individual Contractor must complete the Services by the date specified in the Schedule of Particulars. If the Individual Contractor fails to do so, this Agreement shall be automatically terminated at the end of said date, without prejudice to UNOPS’ right to compensation for said failure.

**1.3.** This Agreement carries no expectation of renewal or of conversion to any other type of contract in any activity of UNOPS or any other UN organization.

#### **2. TERMS OF REFERENCE**

**2.1.** The Individual Contractor shall provide the Services in the duty station(s) specified in the Schedule of Particulars. The Individual Contractor’s Functional Title is as specified in the Schedule of Particulars.

**2.2.** The Individual Contractor shall provide the services set out in Annex B (the “Services”). The Individual Contractor shall commence providing the Services on the date specified in the Schedule of Particulars.

#### **3. REMUNERATION**

**3.1.** As full consideration for the services performed by the Individual Contractor under the terms and conditions of this Agreement, UNOPS shall pay the Individual Contractor upon certification that the services have been satisfactorily performed in accordance with this Agreement the fee specified in the Schedule of Particulars. UNOPS may decide in writing to dispense with certification. If the Individual Contractor’s fee is specified as a monthly rate, and the Individual Contractor is only entitled to be remunerated for part of a calendar month: the fee for said part month shall be calculated according to UNOPS’ policy on this issue as it may be amended from time to time. The Individual Contractor shall upon receiving UNOPS’



written notification refund to UNOPS any money that the Individual Contractor was not entitled to receive.

**3.2.** The Individual Contractor shall not be entitled to any travel at UNOPS expense or any travel-related reimbursement or payment except where expressly provided in the Agreement and/or in the UNOPS Administrative Instruction “*Official Duty Travel - Individual Contractors*” (Ref: AI/CSG/2010/03), as may be amended from time to time.

#### **4. PARTICIPATION IN THE UNOPS PROVIDENT FUND**

**4.1.** Except if expressly stated to the contrary in the Schedule of Particulars, this Agreement is subject to the UNOPS policies and other administrative issuances regarding the UNOPS Provident Fund (as they may be introduced and/or amended from time to time). Without limiting the generality of the foregoing: the UNOPS Provident Fund policy (as it may be amended from time to time) shall determine whether the Individual Contractor must be a participant of the UNOPS Provident Fund and, if the Individual Contractor is a participant, the amounts that the Individual Contractor and UNOPS must contribute to the UNOPS Provident Fund and the benefits that the Individual Contractor will receive from the UNOPS Provident Fund.

#### **5. ELIGIBILITY FOR LEAVE, INSURANCE, AND OVERTIME COMPENSATION**

Subject to section E of the document signed by the Individual Contractor, the Individual Contractor’s eligibility for leave, health insurance coverage, Malicious Acts Insurance coverage, service-incurred illness, injury and death insurance and overtime compensation shall be determined as indicated below.

**5.1.** The Individual Contractor’s entitlement for absence due to illness without reduction in his/her fee, subject to meeting all other requirements contained in the provisions of UNOPS’ leave policy (or any other policy that has been specified as applicable), is as specified in the Schedule of Particulars.

**5.2.** The Individual Contractor’s entitlement to annual leave without reduction in his/her fee, subject to meeting all other requirements contained in the provisions of UNOPS’ leave policy (or any other policy that has been specified as applicable), is as specified in the Schedule of Particulars.

**5.3.** The Individual Contractor’s entitlement to maternity/paternity leave without reduction in her/his fee is as specified in the Schedule of Particulars.

**5.4.** The Individual Contractor shall work on week-ends and holidays, unless it is specified to the contrary in the Schedule of Particulars.

**5.5.** The Individual Contractor’s entitlement to overtime compensation is as specified in the Schedule of Particulars.

**5.6.**The Individual Contractor shall not be covered by UNOPS against injury, illness and death, except to the extent (if any) specified in the Schedule of Particulars.

**5.7.**The Individual Contractor shall not be covered by UNOPS against disability and death resulting from malicious acts, except to the extent (if any) specified in the Schedule of Particulars.

**5.8.**Health insurance is not provided by UNOPS, except to the extent (if any) specified in the Schedule of Particulars.

## **6. LEGAL STATUS OF THE INDIVIDUAL CONTRACTOR**

**6.1.** The Individual Contractor shall have the legal status of an independent contractor vis-à-vis UNOPS, and shall not be regarded, for any purpose, as a staff member of UNOPS or any other entity of the United Nations (hereinafter referred to as “UN”) under the Staff Regulations and Rules of the UN, or as an “official” of UNOPS or any other entity of the UN for the purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the UN on 13 February 1946 (hereinafter referred to as “General Convention”). Accordingly, nothing within or relating to this Agreement shall be interpreted as establishing a relationship of employer and employee, or of principal and agent, between UNOPS and the Individual Contractor.

**6.2.** Nothing in this Agreement shall prevent the Individual Contractor from being considered as an “expert on mission for the United Nations” under Section 22, Article VI of the General Convention. Whether or not the Individual Contractor is such an expert is an issue that, if necessary, will be conclusively determined by the Secretary-General of the United Nations or his/her delegate.

**6.3.** The Individual Contractor has no authority or any other right to incur any legal or financial obligations on behalf of UNOPS or any other UN entity, unless UNOPS specifically grants authority separately from this Agreement. The Individual Contractor must not expressly or implicitly represent to any person that he has authority that he/she does not have.

## **7 GENERAL RIGHTS AND OBLIGATIONS OF THE INDIVIDUAL CONTRACTOR**

**7.1.** The rights and obligations of the Individual Contractor are strictly limited to the express terms and conditions of this Agreement.

**7.2.** The Individual Contractor recognizes and accepts that the terms and conditions of this Agreement differ from the terms and conditions applicable to UNOPS staff members appointed under the UN Staff Regulations and Rules. Accordingly, the Individual Contractor shall not be entitled to any benefit, payment, subsidy, compensation, entitlement or pension, except where expressly provided for in this Agreement. The Individual Contractor is excluded from participation in the United Nations Joint Staff Pension Fund.

**7.3.** The Individual Contractor shall be responsible for paying any tax levied by his/her Government or other entities on his/her UNOPS earnings. Under no circumstances shall UNOPS be responsible for paying or reimbursing such taxes.

**7.4.** Bank charges related to any payment will be borne by the Individual Contractor. No statement of earnings will be issued by UNOPS to the Individual Contractor.

**7.5.** The Individual Contractor must neither seek nor accept any instructions in connection with UNOPS from any authority external to UNOPS. Should any authority external to UNOPS seek to impose any instructions on the Individual Contractor in connection with UNOPS, the Individual Contractor must promptly notify UNOPS and provide all reasonable assistance required by UNOPS to address this matter. The Individual Contractor must not take any action that may adversely affect the interests of UNOPS, and the Individual Contractor must perform his/her obligations under the Agreement with the fullest regard to the interests of UNOPS. During the period of service with UNOPS, the Individual Contractor must refrain from any conduct that would reflect adversely on UNOPS or the rest of the UN system (or both), and must not engage in any activity that is incompatible with his/her performance of services for UNOPS under this Agreement.

**7.6.** Individual Contractor warrants that he/she has not and shall not offer any direct or indirect benefits arising from or related to the performance of the Agreement or the award thereof to any representative, official, or any other personnel of UNOPS or any other UN entity.

**7.7.** The Individual Contractor shall be solely liable for claims by third parties arising from his/her own negligent and/or intentional acts or omissions during the course of the Agreement, and shall ensure that under no circumstances will UNOPS be held liable for such claims.

**7.8.** The Individual Contractor shall indemnify, defend, and hold and save harmless UNOPS, and its officials, agents, employees and individual contractors from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

- (i) allegations or claims that the use by UNOPS of any device, any material or any other goods or services provided by the Individual Contractor, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; and
- (ii) allegations or claims that the Individual Contractor during the term of the Agreement caused injury, loss and damage –whether physical or financial or both- to anyone not a party to the Agreement, including, without limitation, allegations and claims in the nature of a claim for workers' compensation.

**7.9.** The Individual Contractor must comply with all legislation, ordinances, rules, regulations, instruments, and other applicable laws in all relevant jurisdictions (e.g. country of origin, country of residence, country (ies) where services are performed), including but not limited to those relating to taxation, licences, work permits and visas.

**7.10.** The Individual Contractor must arrange for any necessary visa(s) and/or work permit(s). UNOPS will not reimburse the Individual Contractor for visa and/or work permit fees unless the Individual Contractor is subsequently requested to undertake travel to additional locations, in which case any visa and/or work permit fees necessary for said additional locations may be claimed through submission of a travel/expense claim and supporting documents.

**7.11.** UNOPS shall, after the expiration or termination of this Agreement, have the option of requiring the Individual Contractor to assist UNOPS or its client(s) (or both) in any disputes with third parties. Such assistance may include providing UNOPS or its lawyers (or both) with information regarding the Individual Contractor's service under this Agreement, and serving as a witness in arbitration, conciliation, mediation and/or similar proceedings. The Individual Contractor shall be remunerated for such assistance at the same rate as specified in this Agreement. UNOPS may exercise the aforementioned option by giving the Individual Contractor not less than fifteen (15) days' prior notice in writing. Whether or not UNOPS exercises such option, the Individual Contractor must not provide any assistance (other than serving, subject to the provisions of this Agreement regarding confidentiality, as an unremunerated fact witness) to the other party or parties to the dispute without the prior written consent of UNOPS.

## **8. TERMINATION**

**8.1.** Either party may terminate this Agreement at any time for convenience by giving the other party written notice. The minimum notice period is as follows:

- (i) Two (2) calendar days if the Agreement is for a period of less than one (1) month.
- (ii) Seven (7) calendar days if the Agreement is for a period ranging from one (1) month up to but excluding six (6) months.
- (iii) Fourteen (14) calendar days if the Agreement is for a period of six (6) months or more but less than one year.
- (iv) Thirty (30) calendar days if the Agreement is for a period of one (1) year or more.

**8.2.** UNOPS may terminate this Agreement with immediate effect if the Individual Contractor breaches this Agreement. Such termination shall be without prejudice to article 9 below and article 8.4 below. Upon such termination, UNOPS shall have the right to suspend all pending payments. For the avoidance of doubt: such termination shall release UNOPS from all obligations that would have been due upon the Individual Contractor's completion of

the Services. Nothing in the foregoing shall affect the right of UNOPS to claim compensation for the Individual Contractor's breach of the Agreement.

**8.3.** Subject to article 9 below and articles 8.2 and 8.4 below: if the Agreement is terminated, the Individual Contractor will be compensated on a pro-rata basis for no more than either the actual number of days worked or the percentage of output provided to the satisfaction of UNOPS. It is within UNOPS' discretion to decide which of the foregoing bases will determine how pro-rata payment will be made.

**8.4.** Any costs incurred by UNOPS resulting from and/or in connection with the termination of this Agreement by the Individual Contractor, or by UNOPS due to the Individual Contractor's breach of this Agreement, may be deducted from any amount otherwise due to the Individual Contractor from UNOPS.

**8.5.** Upon receipt of a notice of termination of the Agreement, the Individual Contractor must, except as UNOPS may otherwise direct in writing:

- (i) refrain from undertaking any further or additional commitments under the Agreement;
- (ii) take immediate steps to bring the performance of any obligations under the Agreement to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum;
- (iii) deliver to UNOPS all documents, plans, drawings, other property or information that the Individual Contractor would, if the Agreement had not been terminated, be required to provide UNOPS by the expiration of the Agreement (for the avoidance of doubt: (a) if the documents, plans, drawings, other property or information are not yet completed, the Individual Contractor must deliver all the drafts; and (b) the foregoing includes property and information in electronic format).

## **9. UNSATISFACTORY OR INCOMPLETE SERVICES**

**9.1.** In the event that the Services performed by the Individual Contractor are unsatisfactory, incomplete or otherwise not in accordance with this Agreement, UNOPS shall have the right to refuse to accept the Services (or any part(s) thereof) and (i) to instruct the Individual Contractor to correct or complete the Services (or part(s) thereof), or (ii) to terminate the Agreement in accordance with article 8 above, and arrange for the Services (or part(s) thereof) to be corrected, completed or otherwise provided by another contractor. Any costs incurred by UNOPS as a result of the unsatisfactory or incomplete provision of the Services may be deducted by UNOPS from any payments due to the Individual Contractor by UNOPS. Nothing in the foregoing shall affect the right of UNOPS to claim other compensation for the Individual Contractor's breach of the Agreement.

## **10. PROPERTY RIGHTS**

**10.1.** Title to any equipment and supplies that may be furnished by UNOPS to the Individual Contractor shall rest with UNOPS, and such equipment and supplies must be returned to UNOPS at the conclusion of the Agreement or when no longer needed by the Individual Contractor, whichever is the earlier. Such equipment and supplies, when returned to UNOPS, must be in the same condition as when delivered to the Individual Contractor, reasonable wear and tear excepted.

**10.2.** UNOPS 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 (i) which the Individual Contractor has developed for UNOPS under the Agreement and (ii) 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 Agreement, and the Individual Contractor acknowledges and agrees that such products, processes, inventions, ideas, know-how, documents and other materials constitute works made for hire for UNOPS. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Individual Contractor: (a) that pre-existed the performance by the Individual Contractor of his/her obligations under the Agreement, or (b) that the Individual Contractor may develop or acquire, or may have developed or acquired, independently of the performance of his/her obligations under the Agreement, UNOPS does not and shall not claim any ownership interest thereto, and the Individual Contractor grants to UNOPS a perpetual and irrevocable license to use such intellectual property or other proprietary right for the purposes of and in accordance with the requirements of the Agreement. At the request of UNOPS, the Individual Contractor shall take all necessary steps for, including executing all necessary documents, and generally assist UNOPS in, securing such proprietary rights and transferring or licensing them to UNOPS in compliance with the requirements of any applicable law and the Agreement.

**10.3.** The Individual Contractor hereby grants UNOPS a perpetual and irrevocable licence to all intellectual property and other proprietary rights created while the Individual Contractor is at work locations or other premises under the control of UNOPS and/or its client. If requested by UNOPS, the Individual Contractor must provide to UNOPS a copy of materials embodying such intellectual property and other proprietary rights.

## **11. CONFIDENTIALITY**

**11.1.** The Individual Contractor shall treat all information and documents that he/she receives in connection with the provision of the Services as confidential, unless expressly stated otherwise. The foregoing does not apply to information and documents that have been made publicly available without breach of any confidentiality obligations.

**11.2.** Unless specifically set out in this Agreement or specifically authorized in writing by the UNOPS Executive Director, the Individual Contractor must not communicate at any time to the media, or to any institution, person, Government, or other external entity any

information that has not been made public and which has become known to him/her by reason of his/her association with UNOPS, and he/she must not use such information for private advantage. For the avoidance of doubt, the term “information” includes documents.

**11.3.** The obligations contained in this article shall survive the expiration or termination of this Agreement.

## **12. USE OF UNOPS EMBLEM AND NAME**

**12.1.** The Individual Contractor must not advertise or publicize his/her association with UNOPS under this Agreement nor use the name, emblem, or official seal of UNOPS and/or the United Nations, or any abbreviation of the name of UNOPS and/or the United Nations, for commercial purposes or for his/her personal gain or benefit without the prior written approval of UNOPS. The obligations contained in this article shall survive the expiration or termination of this Agreement, but shall not prevent the Individual Contractor from mentioning periods worked under this Agreement in his/her curriculum vitae.

## **13. DISCLOSURE**

**13.1.** The Individual Contractor shall disclose to UNOPS any business or professional employment or activity in which he/she may have been involved prior to, or may be involved in during or after the Agreement. These activities must not be incompatible with the performance of services called for in this Agreement nor represent a real or perceived conflict of interest.

## **14. STANDARDS OF CONDUCT**

**14.1.** The Individual Contractor must comply with the standards of conduct set forth in the UN Secretary-General’s Bulletin of 9 October 2003 entitled “Special Measures for Protection from Sexual Exploitation and Sexual Abuse” (ST/SGB/2003/13) and the UN Secretary-General’s Bulletin of 18 June 2002 entitled "Regulations Governing the Status, Basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission" (ST/SGB/2002/9) as they may be amended from time to time. Furthermore, the Individual Contractor must comply with all applicable UNOPS administrative issuances, including, without limitation, the “UNOPS Policy on Prohibition of Discrimination, Harassment, including Sexual Harassment, and Abuse of Authority” (Organizational Directive No. 8), as may be amended from time to time.

**14.2.** Although the Individual Contractor does not have the status of a United Nations official/staff member, while working on UNOPS-related activities, he/she shall comply with the standards of conduct required of a UN civil servant except to the extent such standards are, in the opinion of UNOPS, inherently inconsistent with his/her status as independent contractor.

**14.3.** In addition, the Individual Contractor acknowledges that UNOPS cannot maintain relationships with any person if doing so would be inconsistent with fundamental UN



standards of conduct or decisions of bodies to which UNOPS is accountable (which shall be deemed to include the UN Security Council and the UN Secretary-General) (as they may be issued or amended from time to time), and the Individual Contractor agrees that, in such circumstances, UNOPS may terminate this Agreement without prior notice and without compensation.

## **15. SAFETY AND SECURITY**

**15.1.** The Individual Contractor must abide by UN safety and security policies, administrative instructions, directives, plans and procedures of the UN Security Management System and that of UNOPS (please refer to the Safety and Security site on the UNOPS intranet for more information). The Individual Contractor must exercise proper precautions and avoid taking unwarranted risks that could jeopardize either his/her own safety and security and/or that of other persons, as well as assets, property and information of UNOPS or any other UN entities or third parties. The Individual Contractor acknowledges that breach of security policies, etc. may result in loss of insurance coverage.

**15.2.** If the Individual Contractor is required to work at UNOPS premises or travel at UNOPS expense, he/she must complete both the “Basic Security in the Field” and the “Advanced Security in the Field” courses. Said security courses must where possible be completed prior to the commencement of the Services - if the foregoing is not possible, said security courses must be completed at the latest within one week of commencement of the Services. Upon completion of such security courses, a copy of the course certificates must be forwarded by the Individual Contractor to the UNOPS hiring unit.

**15.3.** Notwithstanding the aforesaid, the Individual Contractor must not travel to duty stations without obtaining security clearance prior to travel. The Individual Contractor is responsible for obtaining all security clearances. Security clearance can be requested from the UN Department of Safety and Security at the following website: [dss.un.org](https://dss.un.org).

**15.4.** The Individual Contractor shall also keep a copy of all security certificates and security clearances and, if requested by UNOPS, provide to UNOPS a copy thereof.

## **16. NO ASSIGNMENT, ETC.**

**16.1** The Individual Contractor may not assign, transfer, pledge or make any other disposition of the Agreement, of any part of the Agreement, or of any of the rights, claims, benefits, proceeds or obligations under the Agreement, except with the prior written consent of UNOPS.

## **17. AMICABLE SETTLEMENT OF DISPUTES**

**17.1. Amicable Settlement:** In the event of a dispute, claim or controversy arising out or in relation to the Agreement, or the breach, termination or invalidity thereof (the “Dispute”), UNOPS and the Individual Contractor shall resolve the Dispute amicably.

**17.2. Arbitration:** In the event the Parties are unable to resolve the Dispute amicably, the Dispute may be referred by either of the Parties to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. There shall be no place of arbitration. The arbitral tribunal may meet at any location it considers appropriate for deliberations. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

**17.3.** Any arbitration in respect of the relationship created by this Agreement must be commenced within two years after the cause of action has accrued. A cause of action shall automatically be extinguished two years after it accrues, unless arbitration has already commenced in accordance with article 17.2 above. For the purposes of this Agreement, an arbitration is commenced by (and only by) communication and receipt of a notice of arbitration in accordance with the UNCITRAL Arbitration Rules. For the avoidance of doubt: this article also applies to issues not expressly covered by this Agreement.

## **18. PRIVILEGES AND IMMUNITIES OF UNOPS**

**18.1.** Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and its subsidiary organs, including UNOPS, pursuant to the General Convention or otherwise.

