

[This template contract is to be used to engage a consultant for works, for the provision of services such as design services, and/or construction management services, technical investigations, etc.]

UNITED NATIONS OFFICE FOR PROJECT SERVICES

and

(2) **[Insert Consultant's Name]**

[Insert one sentence describing the services required]

Contract No.: **[insert]**

[insert month] 20**[insert]**

CONTRACT FOR CONSULTANT SERVICES FOR WORKS

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To request such permission, please contact:
UNOPS Sustainable Infrastructure Practice Group (SIPG)
Copenhagen, Denmark
infrastructure@unops.org

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SCHEDULES

- Schedule 1 - Terms of Reference [and Design Brief] [remove if you are not engaging a design consultant]
- Schedule 2 - Details
- Schedule 3 - Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer
- Schedule 4 - Remuneration and Payment
- Schedule 5 - Time Schedule for Services
- Schedule 6 - Insurances
- Schedule 7 - Key Personnel

INSTRUMENT OF AGREEMENT

THIS CONTRACT is made on the [insert] day of [insert month] 20[insert].

BETWEEN

(1) The United Nations Office for Project Services (“UNOPS”), an organ of the United Nations, having its postal address at [address], [insert name of city and country] (the “Employer”); and

[(2) [insert name], a [insert type of company e.g. limited liability] company incorporated under the laws of [insert] and having its registered address at [address], [insert name of city and country] (the “Consultant”).] [Use in case of a single Consultant]

[(2) [insert name], a [insert type of company e.g. limited liability] company incorporated under the laws of [insert] and having its registered address at [address], [insert name of city and country];

(3) [insert name], a [insert type of company e.g. limited liability] company incorporated under the laws of [insert] and having its registered address at [address], [insert name of city and country] (together the “Consultant”).] [Use in case of a joint venture, association or consortium]

BACKGROUND

A The Employer intends to implement the Works. The Services are required for the implementation of the Works.

B The Consultant has represented to the Employer that it has the appropriate experience, expertise, licences and resources to undertake the Services and has agreed to undertake the Services in accordance with the Contract.

C In reliance on the Consultant's representations the Employer has entered into the Contract.

D The Contract sets out the terms and conditions upon which the Consultant will undertake the Services.

THE AGREEMENT:

1. The Employer agrees to pay the Consultant in accordance with Clause 5 of the Contract and Schedule 4 [*Remuneration and Payment*], in consideration for the Consultant executing and completing the Services and otherwise performing all of its obligations in accordance with the Contract.

2. In the Contract, words and expressions shall have the same meanings as are respectively assigned to them in the General Conditions.

3. The following documents, listed in the order of priority, are deemed to form and be read and construed as part of the Contract:

- 3.1 this Instrument of Agreement;
- 3.2 Schedule 2 [*Details*];
- 3.3 the Particular Conditions (if any);
- 3.4 the General Conditions;
- 3.5 the remaining Schedules.

SIGNING PAGE

IN WITNESS WHEREOF, the Parties have caused the Contract to be executed by their respective duly authorised representatives as of the date first written above:

SIGNED BY _____

[insert name of authorised signatory of UNOPS]

Duly authorised to sign the Contract for and on behalf of the Employer, UNOPS:

In the presence of: _____

Signature _____ (witness)

Address _____

Occupation _____

SIGNED BY _____

[insert name of authorised signatory of the Consultant] [In case of a joint venture, association or consortium, the party designated in the bid/proposal as authorized to represent the joint venture, association or consortium shall sign the Contract]

Duly authorised to sign the Contract for and on behalf of the Consultant, **[insert]**:

In the presence of: _____

Signature _____ (witness)

Address _____

Occupation _____

GENERAL CONDITIONS

1. GENERAL PROVISIONS

1.1 Definitions

In the Contract, the following words and expressions shall have the meanings stated below. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

"**Affiliate**" means:

- (a) the ultimate parent company of a Party; or
- (b) any company controlled by that ultimate holding company; or
- (c) any company controlling a Party; or
- (d) any company controlled by a Party.

"**Agreed Compensation**" means the sums as defined in Schedule 4 [*Remuneration and Payment*] which are payable to the Consultant under the Contract.

"**Authority(ies)**" means all local, regional, territorial, free zone, municipal government, ministry, governmental department, commission, board, bureau, agency, instrumentality, executive, judicial or administrative body, recognised by the United Nations and having jurisdiction over the Services and the Consultant as well as its Affiliates.

"**Commencement Date**" means the date stated in Schedule 2 [*Details*].

"**Consultant**" means the company(ies) named in the Instrument of Agreement, who is/are employed by the Employer to perform the Services, and legal successors to and permitted assignees of such company(ies).

"**Consultant's Representative**" means the person designated by the Consultant in accordance with Sub-Clause 3.3.

"**Consultant's IPR**" means all intellectual property rights owned or held by the Consultant in accordance with Sub-Clause 1.7.

"**Contract**" means the Instrument of Agreement, Schedule 2 [*Details*], the Particular Conditions (if any), the General Conditions, the remaining schedules as listed in the Instrument of Agreement.

"**Convention on the Privileges and Immunities of the United Nations**" means the convention adopted by the General Assembly on 13 February 1946, which defines and specifies numerous issues relating to the status of the United Nations, its assets and its officials, in terms of the privileges and immunities that must be granted to them by its Member States.

"**Country**" means the country where the Works are to be implemented.

"**Date of the Contract**" means the date of execution of the Contract, as stated in the Instrument of Agreement.

"**Day**" means a business day in the city stated in Schedule 2 [*Details*].

"**Deliverable**" means a document to be prepared by the Consultant under the Contract and includes any documents identified in Schedule 1 [*Terms of Reference [and Design Brief]*]. [Remove if you are not engaging a design consultant]

"**Dispute**" means all disputes or disagreements arising out of or in connection with the formation, performance, interpretation, nullification, termination or invalidation of the Contract or the Services, or any other related dispute or disagreement.

"**Document**" means each Deliverable and any other document, plan, design, specification, report, or other document required to be prepared by the Consultant as part of the Services.

"**Employer**" means the Party named in the Instrument of Agreement, who employs the Consultant, and legal successors to the Employer and permitted assignees.

"**Employer's IPR**" means all intellectual property rights owned or held by the Employer in accordance with Sub-Clause 1.7.

"**Employer's Representative**" means the person designated by the Employer in accordance with Sub-Clause 2.1.

"**Final Completion of the Services**" means when the Works have reached Final Completion and all the Services have been provided by the Consultant and accepted by the Employer, unless the Contract has been otherwise terminated in accordance therewith. This shall not relieve the Consultant of its obligation to rectify at his own cost any defect in the Services that may occur during and until the expiry of the Liability Period as set out in Schedule 2 [*Details*].

"**Final Completion of the Works**" means when the Works have reached Final Completion under the contract(s) between the Employer and the Contractor(s) responsible to implement the Works.

"**FIDIC**" means the Fédération Internationale des Ingénieurs-Conseils (a/k/a the International Federation of Consulting Engineers).

"**IPR**" means all intellectual property rights conferred by Law or equity and subsisting anywhere in the world, including:

- (a) (i) copyright; (ii) inventions (including patents, innovation patents and utility models); (iii) confidential information, trade secrets, technical data and know-how, whether or not confidential and in whatever form held, including formulae, design specifications, drawings, data, manuals and instructions; (iv) designs; (v) trademarks and service marks; and (vi) circuit layout designs, topography rights and rights in databases, whether or not any of these is registered, registrable or patentable;
- (b) any similar rights resulting from intellectual activity in the industrial, commercial, scientific, literary or artistic fields which subsist now or in the future; and
- (c) any applications and the right to apply for registration of any of the above; and
- (d) any information or advice that is subject to legal professional privilege.

"**General Assembly**" means the main deliberative, policymaking and representative organ of the United Nations (UN).

"**Key Personnel**" means those persons specified in Schedule 7 [*Key Personnel*] in the capacity and role identified therein.

"**Law(s)**" means:

(a) all legislation, including, decrees, resolutions, acts, statutes, ordinances, rules, regulations, directives and other orders, treaties, by-laws, codes of practice and other subordinate legislation of the Country or any country in which the Services are performed;

(b) the requirements, rules and regulations of any Authority, including legislation and regulations covering the registration and licensing of the Consultant necessary for the proper execution of the Services in accordance with the Agreement; and

(c) the guidelines of the Country or any country in which the Services are performed and of all relevant Authorities, with which the Consultant is legally required to comply.

"**Liability**" means any liability or obligation (whether actual, contingent or prospective) including for any loss irrespective of when the acts, events or things giving rise to the liability or obligation occurred.

"**Local Currency**" means the currency stated in Schedule 4 [*Remuneration and Payment*] and "**Foreign Currency**" means any other currency.

"**Member States**" means a government of a country that holds membership of the United Nations.

"**New IPR**" has the meaning as defined in Sub-Clause 1.7(h).

"**Party**" and "**Parties**" means the Employer or/and the Consultant and "**third party**" means any other person or entity as the context requires.

"**Personnel**" means any director, secretary, officer, staff, employee, subcontractor, representative or agent.

"**Site**" means the location where the Works in relation to which the Services are required are to be implemented.

"**Services**" means the services defined in Schedule 1 [*Terms of Reference [and Design Brief]*] [Remove if you are not engaging a design consultant] to be performed by the Consultant in accordance with the Contract.

"**Subcontractor**" or "**Subconsultant**" means any subcontractor or subconsultant engaged by the Consultant to perform a part or parts of the Services.

"**Term of the Contract**" means that the Contract shall remain in force until Final Complementation of the Services, unless otherwise terminated in accordance with the Contract.

"**Use**" has the meaning in Sub-Clause 1.7(a).

"**Variation**" means a change, alteration, addition or omission to the Services which is instructed by the Employer under Sub-Clause 4.4.

"**Works**" means the works in relation to which the Services are required, as described in Schedule 2 [*details*].

"**written**" or "**in-writing**" mean hand-written, type-written, printed or electronically made and resulting in a permanent un-editable record.

"**year**" means 365 days.

1.2 Interpretation

- (a) The marginal words and other headings in the Contract shall not be taken into consideration in the interpretation of the Contract.
- (b) The singular includes the plural and vice-versa where the context requires.
- (c) The documents forming the Contract are to be taken as mutually explanatory of one another and shall be read as a whole. For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:
 - (a) the Instrument of Agreement;
 - (b) Schedule 2 [*Details*];
 - (c) the Particular Conditions (if any);
 - (d) the General Conditions; and
 - (e) the remaining Schedules.
- (d) Notwithstanding the priority of documents, if there is any ambiguity or discrepancy in or between the documents forming the Contract in regard to the obligations or requirements for the standard or quality of Services, then the higher or more onerous obligation or requirement shall prevail.
- (e) Words indicating one gender include all genders.
- (f) Provisions including the word “agree”, “agreed” or “agreement” require the agreement to be recorded in writing, and signed by both Parties.

1.3 Communications

- (a) Whenever the Contract provides for the giving or issue of any notice, instruction or other communication by any person, unless otherwise specified such communication shall be:
 - (a) in writing;
 - (b) marked to the attention of the relevant representative of the Parties as set out in Schedule 2 [*Details*]; and
 - (c) either:
 - (A) delivered at the address set out in the Schedule 2 [*Details*]; or
 - (B) sent by facsimile to the facsimile number of the addressee set out in the Schedule 2 [*Details*]; or
 - (C) sent as a document, signed, scanned and attached in an email to the email address set out in the Schedule 2 [*Details*]
- (b) If the addressee has notified in writing a change of fax number or email address, then the communication shall be to that number or address.
- (c) A notice, approval, consent or other communication takes effect from the time it is received unless a later time is specified in it.

- (d) A delivery, letter, document attached to an email or facsimile is deemed to be received:
 - (a) in the case of a delivery to the relevant address when delivered to the relevant address (against a written receipt);
 - (b) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient; and
 - (c) in the case of a document attached to an email, upon receipt of the email in the inbox of the recipient's address.
- (e) For the avoidance of doubt, any notice or other communication will not be deemed to have been given or made under the Contract if it is in the form of email (other than as an attached document in accordance with Sub-Clause 1.3(c)) or minutes of any meetings.
- (f) Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed. When a certificate is issued to a Party, the certifier shall send a copy to the other Party. When a notice is issued to a Party, by the other Party, a copy shall be sent to the other Party, as the case may be.

1.4 Language

- (a) The language for notices, instructions and communications shall be English.
- (b) Unless otherwise specified in the Contract, the Consultant's Documents will be written in English.

1.5 Change in Laws

In the event of a change in Laws, the Agreed Compensation shall be adjusted accordingly.

1.6 Assignments and Sub-Contracts

- (a) The Consultant shall not assign transfer or otherwise dispose of the rights or benefits under the Contract, without the prior written consent of the Employer.
- (b) The Employer may assign, transfer or otherwise dispose of its rights under the Contract without the written consent of the Consultant.
- (c) The Consultant shall not initiate or terminate any sub-contract for the performance of all or part of the Services without the prior written consent of the Employer.

1.7 Employer's and Consultant's Intellectual Property Rights (IPR)

- (a) The Employer grants to the Consultant for the Term of the Contract a non-exclusive, personal, non-transferable, royalty free licence to use, modify, enhance, alter or decompile (**Use**) the Employer's IPR necessary for the performance of the Services.
- (b) Any documentation and information supplied by the Employer to the Consultant for the purposes of performing the Services:
 - (a) shall not be used, copied or reproduced by the Consultant for any other purpose; and

- (b) remains the property of the Employer and shall be returned to it upon request upon Final Completion of the Services or prior termination of the Contract.
- (c) The Consultant grants to the Employer a perpetual, unrestricted, non-exclusive, irrevocable, transferable, royalty-free licence (with a right to sub-licence) to Use (including for the purpose of the disclosure of information or documentation to third parties) the Consultant's IPR which are required by the Employer for:
 - (a) assessment of the performance of the Services;
 - (b) the design, construction, commissioning and/or expansion of the Works; and
 - (c) the operation, support and maintenance of the Works and the use and enjoyment of the Deliverables, or any part of the Deliverable, in connection with the Works.
- (d) Any enhancement, adaptation, change, modification or development (**Enhancements**) of the Employer's IPR is the property of the Employer.
- (e) Any Enhancements of the Consultant's IPR, whether arising as part of the Consultant's performance of the Services or otherwise, is the property of the Consultant.
- (f) The Employer grants to the Consultant a non-exclusive, personal, non-transferable, royalty free licence to Use any Enhancements to the Employer's IPR which are required by the Consultant for the performance of the Services.
- (g) The Consultant grants to the Employer a non-exclusive, irrevocable sub-licensable, perpetual, transferable and royalty free license to Use any Enhancements to the Consultant's Existing IPR for:
 - (a) assessment of the performance of the Services; and
 - (b) the operation, support and maintenance of the Works and the use and enjoyment of the Consultant's Deliverables in connection with the Works.
- (h) All IPR created by the Consultant specifically for the Works in performing the Services (**New IPR**) shall vest immediately in the Employer.
- (i) The Employer grants to the Consultant a non-exclusive and royalty free licence to Use the New IPR to the extent necessary for the performance of the Services.
- (j) Prior to and as a condition of Final Completion or on termination of the Agreement, the Consultant shall provide to the Employer all documentation, data and other information that contains New IPR in the Consultant's possession in an electronic and unlocked format.

1.8 Third Party's Intellectual Property Rights (IPR)

- (a) If any Third Party's IPR forms part of the Services or is necessary to the functioning or operation of the Deliverables, the Consultant shall ensure that the Employer is granted a licence to Use the Third Party's IPR for:
 - (a) assessment of the performance of the Services;
 - (b) the design, construction, commissioning and/or expansion of the Works; and
 - (c) the operation, support and maintenance of the Works and the use and enjoyment of the Deliverables, or any part of the Deliverable, in connection with the Works.

1.9 Employer's Document Management System

- (a) In addition to the Consultant's obligations under Sub-Clauses 1.3, if requested by the Employer, the Consultant shall upload copies of all notices, instructions and other communications under the Contract to the Employer's Document Management System.
- (b) The Employer shall provide to the Consultant the necessary training to use of its Document Management System, as may be reasonably requested by the Consultant, to enable the Consultant to comply with its obligations under this Sub-Clause.

1.10 Confidentiality

- (a) Subject to the following Sub-Clauses, the Parties shall keep confidential and shall not, without the prior written consent of the other Party, disclose to any third party the terms and conditions of the Contract or any documents or other information furnished directly or indirectly by either Party in connection with the Contract or the Services, irrespective of whether such information has been furnished prior to the making of the Contract or at any time.
- (b) Either Party may disclose the terms and conditions of the Contract and any documents and information acquired by it under or pursuant to the Contract without the prior written consent of the other Party if such disclosure is made in good faith:
 - (a) to the extent required by applicable Laws;
 - (b) to any insurer under a policy of insurance issued pursuant to the Contract;
 - (c) to its internal organs, including its directors, employees and officers and the General Assembly in the case of the Employer;
 - (d) to any Subcontractor for the furtherance of the performance of that Party's obligations under the Contract;
 - (e) to outside consultants or advisers engaged by or on behalf of the disclosing Party and acting in that capacity in connection with the Services (including insurance, tax and legal advisers); or
 - (f) to the appropriate authorities of Member States pursuant to the Employer's obligations under the Convention on the Privileges and Immunities of the United Nations.
- (c) The obligations under this Sub-Clause shall not apply to information and documents which:
 - (a) now or in the future have entered the public domain through no fault of the disclosing Party; or
 - (b) otherwise lawfully become available to the disclosing Party from a third party under no obligation of confidentiality.
- (d) This Sub-Clause shall survive the expiry or termination of the Contract.

1.11 Official-Not-To-Benefit, Corruption and Fraud

- (a) The Consultant warrants that it has not engaged, or attempted to engage, in any way whatsoever, in any corruption or fraud in connection with the selection process or the execution of the Contract or any other activities of the Employer or any other entity of

the United Nations, involving, in any way whatsoever, any Employer's Personnel or Employer's Representative, officials, or other agent of the Employer or any other entity of the United Nations.

- (b) In this Sub-Clause, "**Corruption**" means the offering, giving, receiving or soliciting from or to any person, directly or indirectly, anything of value as an inducement or reward:
- (a) for doing or forbearing to do any action in relation to the Agreement or the selection process, or any other activities of the Employer or of any other entity of the United Nations; or
 - (b) for showing or forbearing to show favour or disfavour to any person in relation to the Agreement, or any other activities of the Employer or of any other entity of the United Nations.
- (c) In this Sub-Clause, "**Fraud**" means a misrepresentation or omission of facts in order to influence, or to attempt to influence, the selection process or the execution of the Contract or any other activities of the Employer or of any other entity of the United Nations. The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Contract immediately upon the provision of a written notice without any liability to the Consultant for termination charges or any other liability of any kind.

1.12 Entire Agreement

The Contract constitutes the entire agreement between the Employer and the Consultant with respect to the subject matter of the Contract and supersedes all prior arrangements, representations, communications, negotiations, agreements and contracts (whether written or oral) made between or entered into by the Parties with respect to the subject matter of the Contract prior to the Date of the Contract.

1.13 Severability

If the enforcement or operation of any provision or part of the Contract is prohibited by Law or is by Law rendered void, invalid or unenforceable, such prohibition, voidness, invalidity or unenforceability shall not affect the validity or enforceability of the rest of that provision and/or any other provisions of the Contract.

1.14 Counterparts

The Contract may be executed in any number of counterparts, all of which when taken together shall constitute the one and the same instrument.

1.15 Independent Consultant

The Consultant shall be an independent consultant performing the Contract and is not and shall not be considered to be an employee or agent of the Employer. The Contract does not create any partnership, joint venture or other joint relationship between the Employer on the one hand and the Consultant on the other hand.

1.16 Privity

No provision of the Contract is intended to or does confer upon any third party (including any Subcontractor) any implied benefit or right enforceable at the option of the third party against the Employer.

1.17 Waiver

- (a) None of the terms, provisions or conditions of the Agreement shall be considered waived by the Employer unless a waiver is given in writing by the Employer.
- (b) Any waiver of the Employer's rights, powers or remedies under the Agreement shall be dated and signed by the Employer's Representative granting such waiver and shall specify the right and the extent to which it is being waived.
- (c) Any waiver under this Sub-Clause is without prejudice to the privileges and immunities of the United Nations, of which the Employer is an integral part, as expressly reserved under Sub-Clause 9.1 [*Privileges and Immunities*].

1.18 Publicity and Use of the Name, Emblem of the Employer and the United Nations

- (a) The Consultant shall not:
- (a) advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Employer; or
 - (b) in any manner whatsoever use the name, emblem or official seal of the Employer or the United Nations, or any abbreviation of the Employer's name or the United Nations in connection with its business or otherwise without the prior written permission of the Employer.
- (b) This Sub-Clause shall survive the expiry or termination of the Agreement.

1.19 Mines

- (a) The Consultant warrants and represents that neither it, nor any of the Consultant's subsidiaries or Affiliates (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.
- (b) The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Contract immediately by providing a written notice to the Consultant without any liability to the Consultant for termination charges or any other liability of any kind.

1.20 Unexploded Ordinances

If at any time during the carrying out of the Services an unexploded ordinance or land mine is discovered at the Site, the Consultant shall immediately stop all work at the Site, notify the Employer's Representative, and as applicable, take all necessary steps to ensure the safety of all persons and property and secure the Site. The Consultant shall immediately resume work at the Site when instructed by the Employer's Representative.

1.21 Blasting

- (a) The Consultant shall not instruct the use any explosives without the prior written permission of the Employer. The Consultant shall comply with all regulations in force in the Country regarding the use of explosives and shall provide appropriate storage facilities before applying for permission to use any explosives.
- (b) The Employer's approval or refusal to permit the use of explosives shall not relieve the Consultant from any of its warranties, obligations or liabilities under or in connection with the Contract and the Consultant shall not be entitled to any additional time or

additional costs for the performance of the Services in relation to such approval or refusal.

2. THE EMPLOYER

2.1 Employer's Representative

- (a) The Employer's Representative shall be the person designated by the Employer in Schedule 2 [*Details*] to be his representative for the administration of the Contract.
- (b) Except as otherwise specified in the Contract, no comment, review, representation, inspection, testing, certificate, consent, examination, approval, instruction, notice, proposal, request or similar act (including absence of disapproval) by or on behalf of the Employer or the Employer's Representative shall relieve, reduce or otherwise affect the Consultant's undertakings, warranties, obligations or liabilities, including responsibility for errors, omission, discrepancies and non-compliances.

2.2 Information

In order not to delay the Consultant in the performance of the Services, the Employer shall within a reasonable time give to the Consultant free of cost all information which may pertain to the Services which the Employer is reasonably able to obtain.

2.3 Decisions

On all matters referred to him in writing in accordance with the Contract by the Consultant the Employer shall give his decision in writing within a reasonable time so as not to delay the Services.

2.4 Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer

- (a) If provided in the Contract, the Employer shall make available, free of cost, to the Consultant for the purpose of the Services the equipment and facilities described in Schedule 3 [*Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer*].
- (b) The Employer shall arrange at his cost the provision of Personnel and Services of others as described in Schedule 3 [*Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer*]. The Consultant shall co-operate with such Personnel and the suppliers of such services, but shall not be responsible for them or their performance.

2.5 Payment of Services

The Employer shall pay the Consultant for the Services in accordance with Clause 5 of the Contract and Schedule 4 [*Remuneration and Payment*].

3. THE CONSULTANT

3.1 Services

- (a) The Consultant shall provide the Services as stated in Schedule 1 [*Terms of Reference [and Design Brief] [Remove if you are not engaging a design consultant]*], including the obligation for the Consultant to rectify, at his own cost, any defects in the Services that may occur during the implementation of the Works and thereafter.

- (b) In providing the Services, the Consultant shall exercise reasonable skill, care and diligence, and comply with any applicable Law and relevant standards, including UNOPS' design planning manual(s) as specified in Schedule 1 [*Terms of Reference* **[and Design Brief]** *[Remove if you are not engaging a design consultant]*].
- (c) The Consultant shall, at its own cost, at all times during the performance of the Services, be, and ensure that any person who carries out any part of the Services is, registered and/or licensed as required by any Law or Authority to perform the Services.

3.2 Employer's Property

Anything supplied by or paid for by the Employer for the use by the Consultant shall be and remain the property of the Employer.

3.3 Consultant's Representative

- (a) The Consultant's Representative shall be the person designated by the Consultant in Schedule 2 [*Details*] to be his representative for the administration of the Contract.
- (b) If required by the Employer, the Consultant shall designate an individual to liaise with the Employer's Representative in the Country.

3.4 Consultant's Key Personnel

The key personnel who are proposed by the Consultant to provide the Services shall be subject to acceptance by the Employer with regard to their qualifications and experience and shall be listed in Schedule 7 [*Key Personnel*]. Such acceptance shall not be unreasonably withheld.

3.5 Changes in Personnel

- (a) If it is necessary to replace any of the personnel provided by the Consultant, the Consultant shall arrange for such replacement by a person of comparable competence as soon as reasonably possible.
- (b) The cost of such replacement shall be borne by the Consultant.

3.6 Subcontractors/Subconsultants

- (a) The Consultant shall not subcontract the whole or any part of the performance of the Services without the Employer's prior written consent, which consent shall not be unreasonably withheld. Any consent given by the Employer may be on reasonable conditions determined by the Employer.
- (b) The Consultant shall ensure that any Services performed by a Subcontractor/Subconsultant are in accordance with the Contract.
- (c) The Consultant's obligations under the Contract are not lessened or otherwise affected by entering into any contract with a Subcontractor. The Consultant is solely responsible for its Subcontractor and any act or omission of any Subcontractor or those for whom the Subcontractor is responsible.

3.7 Alcoholic Liquor or Drugs

The Consultant shall not bring, import, sell, give, barter or otherwise dispose of any alcoholic liquor or drugs onto the Site, or permit or suffer any such importation, sale, gift, barter or disposal by its employee, agents, staff, labour, subcontractors, or subconsultants.

3.8 Arms, Ammunition and Explosives

Unless instructed or permitted by the Employer in writing, the Consultant shall not bring onto or store on the Site, give, barter or otherwise dispose of to any person or persons, any arms, ammunition or explosives of any kind or permit or suffer the same.

3.9 Festivals and Religious Customs

The Consultant shall in all dealings with its personnel have due regard to all recognised festivals, days of rest and religious or other customs.

3.10 Epidemics

In the event of any outbreak of illness of an epidemic nature in the Country, the Consultant shall comply with and carry out such regulations, orders and requirements as may be made by the Authorities or local medical or sanitary authorities for the purpose of dealing with or overcoming the epidemic.

3.11 Child Labour

- (a) The Consultant represents and warrants that neither it nor any of its Affiliates (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, amongst other things, 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.
- (b) The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Agreement immediately upon the provision of a written notice without any liability as a result of the termination or any other liability of any kind.

3.12 Sexual Exploitation

- (a) The Consultant shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by the Consultant's Personnel. For these purposes, sexual exploitation and abuse includes sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, unless such sexual activity is consensual between two persons who are married and such marriage is recognized as valid under the laws of the country of citizenship of such Consultant's Personnel.
- (b) In addition, the Consultant 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 in sexual activities that are exploitive or degrading to any person.
- (c) The Consultant acknowledges and agrees that any breach of this Sub-Clause shall entitle the Employer to terminate the Agreement immediately upon the provision of a written notice without any liability as a result of the termination or any other liability of any kind.

4. DURATION, VARIATION, SUSPENSION AND TERMINATION

4.1 Commencement and Time Schedule for the provision of the Services

- (a) The Services shall commence on the Commencement Date, as indicated in Schedule 2 [*Details*].
- (b) The Services shall be provided in accordance with the time schedule as set out in Schedule 5 [*Time Schedule for the Provision of the Services*].

4.2 Delays

If the Consultant believes it is entitled to an extension of time and associated costs as a result of an act or omission of the Employer, its personnel or contractors, the Consultant shall submit a claim to the Employer in accordance with Sub-Clause 8.1.

4.3 Force Majeure

- (a) If the Services are delayed or suspended as a result of a Force Majeure event, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-Clause 8.1.
- (b) Force Majeure shall be understood as an exceptional event or circumstance:
 - (i) which is beyond the Consultant's control;
 - (ii) which the Consultant could not reasonably have provided against before entering into the Contract;
 - (iii) which, having arisen, the Consultant could not reasonably have avoided or overcome; and
 - (iv) which is not substantially attributable to the Employer.
- (c) Force Majeure shall be constituted upon the occurrence of the following events or circumstances, so long as the above conditions are satisfied:
 - (i) war, (whether war be declared or not), invasion, act of foreign enemies within the Country;
 - (ii) rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war within the Country;
 - (iii) munitions of war, ionising radiation or contamination by radio-activity within the Country, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity; and
 - (iv) earthquake, hurricane, typhoon, tsunami, fire, flooding or other natural disaster that are outside the normal range for that place at that time of year.

4.4 Variations

- (a) At any time prior to the Final Completion of the Services, the Employer may instruct the Consultant to vary the Services. Such instruction shall be in writing.

- (b) Within 14 days of receiving such written instruction, or another time frame agreed upon with the Employer, the Consultant shall provide the Employer with a written proposal to implement the requested variation. Such proposal shall include additional time or/and costs necessary for such implementation. If any are available and relevant, the costs of a variation shall be based on the rates included in Schedule 4 [*Remuneration and Payment*].
- (c) As soon as practicable after having received such proposal, the Employer shall request further information from the Consultant or, when the Employer is satisfied with the proposal, provide a written notice to the Consultant, confirming the terms and conditions of the variation.
- (d) If the Services are varied, the Consultant shall be entitled to an extension of time and/or additional compensation, as applicable.
- (e) If the circumstances so required, the Consultant may propose the Employer in writing to vary the Services.

4.5 Suspension of the Services and Termination of the Contract

- (a) The Employer may suspend all or part of the Services for any reasons by giving a 14-days written notice to the Consultant. Upon receiving such the Consultant shall immediately make arrangements to stop the Services and minimise expenditure.
- (b) In case of a suspension of the Service by the Employer, the Consultant may be entitled to additional time and/or compensation. In this case, the Consultant shall inform the Employer in accordance with Sub-clause 8.1.
- (c) If the Consultant is not discharging his obligations, the Employer may terminate the Contract by providing a further 14 days written notice to the Consultant.
- (d) The Employer may terminate the Contract for cause by providing a 14-day written notice to the Consultant.
- (e) The Employer may terminate the Contract for convenience by providing a 28-day written notice to the Consultant.
- (f) Upon termination of the Contract by the Employer, the Consultant shall stop the provision of the Services promptly and take all actions necessary or as may be directed by the Employer to transfer any documents, IPR and equipment to the Employer, as applicable.
- (g) Upon termination of the Contract, the Consultant shall be entitled to any outstanding payment for the Services provided up to the termination of the Contract, and to cover the costs reasonably incurred by the Consultant to bring the Services to an end.
- (h) The Consultant may, by providing a 28-day written notice to the Employer, terminate the Contract, or at his discretion, without prejudice to the right to terminate, suspend the provision of the whole or part of the Services:
 - (a) when 28 days after the due date for payment of an invoice he has not received payment of that part of it which has not by that time been contested in writing; or
 - (b) when Services have been suspended for a period exceeding 182 days.

4.6 Accrued Rights, Claims and Liabilities of Parties

Termination of the Contract shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

5. PAYMENT

5.1 Payment to the Consultant

The Employer shall pay the Consultant for the Services subject to Sub-Clause 6.7 [*Set-Off*] in accordance with the Contract, including for variations instructed in accordance with Sub-Clause 4.4 [*Variations*], in particular this Clause 5 and Schedule 4 [*Remuneration and Payment*].

5.2 Time for Payment

Unless the Employer objects in writing to the invoices of the Consultant in accordance with Sub-Clause 5.4, payments to the Consultant shall be made within 28 days upon receipt by the Employer of such invoices, unless otherwise stated in Schedule 4 [*Payment and Remuneration*].

5.3 Currency of Payment

Payments shall be made in the currency stated in Schedule 4 [*Remuneration and Payment*].

5.4 Disputed Invoices

If any item or part of an item in an invoice submitted by the Consultant is contested by the Employer, the Employer shall give a written notice of his intention to withhold payment with reasons and shall not delay payment of the remainder of the invoice.

5.5 Audit and Investigation

- (a) Each payment made by the Employer to the Consultant may be subject to a post-payment audit by auditors, whether internal or external, of the Employer or by other authorised and qualified agents of the Employer at any time during the Term of the Contract and for a period of two (2) years following the termination of the Contract. The Employer is entitled to a refund from the Consultant for any amounts shown by such audits to have been paid by the Employer other than in accordance with the terms and conditions of the Contract.
- (b) The Contractor acknowledges and agrees that, from time to time, the Employer 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 Consultant generally relating to performance of the Contract. The right of the Employer to conduct an investigation and the Consultant's obligation to comply with such an investigation does not lapse upon Final Completion of the Service or prior termination of the Contract. The Consultant must provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation must include, but is not limited to, the Consultant's obligation to make available the Consultant's Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Employer access to the Consultant's premises at reasonable times and on reasonable conditions in connection with such access to the Consultant's Personnel and relevant documentation. The Consultant must require its agents, including, but not limited to, the Consultant's attorneys,

accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Employer.

5.6 Set-Off

The Employer, without prejudice to any other right it may have, may set-off any amount that may be due by the Consultant to the Employer under the Contract with any amount that may be due by the Employer to the Consultant under the Contract.

6. LIABILITIES

6.1 Joint Liability

In case the Consultant is a joint-venture, association or consortium, each party of such joint-venture, association or consortium shall be jointly liable to Employer for any and all of the obligations of the Consultant under the Contract.

6.2 Liability Period

Notwithstanding anything else in the Agreement or any legal requirement of the Country or any other jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), the Consultant shall not be liable to the Employer for any loss or damage resulting from any occurrence unless a claim is formally made against it before the expiry of the Liability Period as set out in Schedule 2 [*Details*].

6.3 Limit of Liability

The maximum compensation which the Consultant may have to pay to the Employer in respect of liability under Clause 6 shall be limited to the amount stated in the Schedule 2 [*Details*].

6.4 Exceptions

Sub-Clause 6.3 [*Limit of Liability*] does not apply to claims arising:

- (a) from deliberate default, fraud, fraudulent misrepresentation or reckless misconduct; or
- (b) otherwise than in connection with the performance of obligations under the Agreement.

7. INSURANCE

- (a) The Consultant shall undertake and maintain during the Term of the Contract, and shall require its Subcontractors to undertake and maintain, the following valid and enforceable insurances:
 - (a) Professional Liability Insurance;
 - (b) Public Liability Insurance;
 - (c) Employer's Liability Insurance;
 - (d) Any other insurance required in Schedule 6 [*Insurance*].
- (b) The above insurance shall meet the minimum requirements set out below and in Schedule 6 [*Insurance*].

- (c) The Consultant shall also procure and maintain during the Term of the Contract any other valid and enforceable insurance as may be required by Law and require its Subcontractors to effect and maintain such valid and enforceable insurance(s).
- (d) Unless otherwise instructed by the Employer, the Consultant's insurances shall be placed with insurers of good repute and with a financial rating of not lower than Standard & Poor's BBB, Moody's Baa or A.M. Best BBB+.
- (e) The Consultant shall immediately notify the Employer in writing of the occurrence of any of the following events:
 - (i) any circumstance which may lead to the cancellation, non-renewal, suspension or impairment of any insurance undertaken pursuant to this Clause;
 - (ii) an insurer denying coverage or liability for a claim;
 - (iii) an insurer asserting orally or in writing, that one or more of the insurances is void, voidable or otherwise unenforceable; or
- (iv) it becoming aware of any circumstances which might lead to one or more of the insurances becoming void, voidable or unenforceable.
- (f) The Consultant shall provide the Employer with a no less than 28-day written notice in advance of the cancellation, non-renewal, suspension or impairment of any of the insurances taken out pursuant to this Clause.
- (g) The insurances referred to in this Clause shall:
 - (a) name the Employer as co-insured;
 - (b) contain a clause waiving the insurers' subrogation rights against each insured party, its personnel and agents (except where such rights are due to a vitiating act); and
 - (c) provide for a no less than 30-day written notice of their cancellation, non-renewal or amendment to be given to the Employer.
- (h) The Consultant shall, as soon as reasonably practicable, submit to the Employer copies of cover notes and/or a broker letter in evidence that:
 - (i) the insurances to be procured and maintained pursuant to this Clause have been undertaken by the Consultant; and
 - (ii) all premiums due have been paid.
- (i) Upon request of the Employer, the Consultant shall provide the Employer copies of the policies of the insurances required under this Clause.
- (j) If the Consultant fails to procure or maintain during the Term of the Contract any of the insurances required under this Clause, the Employer may terminate the Contract immediately upon written notice to the Consultant without any liability of any kind to the Consultant as a result of such termination.
- (k) The Consultant shall give the Employer and the insurer (as may be required by the applicable insurance) written notice immediately upon:

- (i) the occurrence of any loss which will or may exceed the deductible on a Consultant Insurance policy; and
 - (ii) becoming aware of any circumstances which might give rise to a loss which will exceed the deductible of the applicable insurance.
- (l) Any notice given by the Consultant shall include full details of the nature of the loss or the circumstances which may give rise to the loss, its amount and the steps that have been taken, or will be taken in respect of such loss or circumstances subject to the insurer's consent (as may be required under the applicable insurance). The Consultant shall keep the Employer fully informed in respect of any material developments as soon as they occur.
- (m) The Consultant shall not, without obtaining the prior written consent of the Employer and the insurer (as may be required under the applicable insurance):
- (a) make any admission of liability to a third party;
 - (b) enter into any negotiation to settle or compromise a claim under a Consultant's Insurance;
 - (c) enter into a settlement or compromise a claim on the Consultant's Insurances; or
 - (d) commence litigation or arbitration proceedings.
- (n) In handling a claim with an insurer, the Consultant shall keep the Employer fully informed and seek the co-operation of the Employer and its professional advisors.
- (o) The insurances required under this Clause shall be primary to and not in excess to (except in respect of any layers of third party cover effected specifically for the Services) or contributing with any other insurance maintained by any insured.
- (p) Neither failure to comply nor full compliance with the insurance provisions of the Contract shall limit or relieve the Consultant of its liabilities and obligations under the Contract. Any amounts not insured or not recovered from the insurers shall be borne by the Consultant and/or the Employer in accordance with these obligations, liabilities or responsibilities.
- (q) The Consultant shall be responsible under any of the insurance policies required in this Clause for any deductible, fees and other costs or failure to recover in whole or part, in which case the Contractor shall indemnify the Employer in respect of such deductible, fees and other costs or failure to recover.
- (r) The cost of the above insurances shall be deemed to be incorporated into the Consultant's fees.
- (s) The obligations in this Clause shall survive the termination or expiry of the Contract.

8. CLAIMS AND DISPUTE RESOLUTION

8.1 Claims

- (a) If the Consultant believes to be entitled to additional time or costs under the Contract, it shall inform provide details to the Employer regarding the claim within 14 days of the circumstances giving rise to such claim.

- (b) Within 28 days of receiving such claim, the Employer shall respond to the Consultant, asking for more information, grant or deny the claim.

8.2 Amicable Resolution

- (a) In the event of a Dispute, written notice of such Dispute shall be given to the other Party's Representative. That notice shall:
 - (a) set out the legal basis of the claim;
 - (b) set out the facts upon which the claim is based;
 - (c) have annexed copies of correspondence and any relevant background material;
 - (d) contain detailed particulars of the quantification of the claim; and
 - (e) if the claim is made by the Consultant, be signed by its chief executive officer (or equivalent officer).
- (b) Upon receipt of such notice by the other Party, the Employer's Representative and the Consultant's Representative shall attempt to resolve this matter amicably. If the Employer's Representative and the Consultant's Representative are unable to resolve the Dispute amicably within 28 Days, the Dispute shall be referred by either Party to Senior Representatives of the Parties to be designated in writing by the Parties at that time.
- (c) If the Senior Representatives of the Parties are unable to resolve the Dispute amicably within 28 days, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the provisions of Sub-Clause 7.2 [*Arbitration*].

8.3 Arbitration

- (a) If the Parties do not resolve the Dispute amicably pursuant to Sub-Clause 8.2, the Dispute shall be finally resolved, at the request of either Party, through arbitration in accordance with the UNCITRAL Arbitration Rules then in effect (the "**Rules**") provided that:
 - (a) there shall be no seat or place of arbitration. The place of hearing shall be determined at the time of the Dispute;
 - (b) the language of the arbitration shall be English;
 - (c) the decisions of the arbitral tribunal shall be guided by the general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("**LIBOR**") then prevailing, and any such interest shall be simple interest only; and
 - (d) 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.
- (b) The arbitral proceedings and any information and documents relating to these proceedings shall be regarded as confidential, subject to Sub-Clause 1.10.

9. 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 United Nations, including its subsidiary organs, of which the Employer is an integral part, which are hereby expressly reserved.

10. MISCELLANEOUS

- (a) In connection with the performance of the Contract, the Consultant acknowledges that the imports and customs Law and regulations of the Country shall apply to the furnishings and shipments of any products and components thereof to the Country. The Consultant specifically acknowledges that the aforementioned import and custom Laws and regulations of the Country prohibit, among other things, the importation into the Country of certain products and components.
- (b) The Contract may not be amended except in writing signed by a duly authorised representative of each of the Parties.
- (c) Subject to any express provision in the Contract to the contrary, the respective warranties, obligations or liabilities of the Parties do not cease on the expiry or termination of the Agreement.

PARTICULAR CONDITIONS

[Note to be deleted:]

Particular Conditions must be prepared and review in collaboration with UNOPS legal team.

They should be incorporated in certain circumstances where changes and additions to the General Conditions are required for a specific works package, either prior to issuing the Contract to tenderers, or following negotiations with the selected Consultant.

Details regarding the project but not amending the General Conditions shall be included in Schedule 2 [Details]

The clauses within the General Conditions are amended in the following manner:

If nothing is stated, then no amended conditions apply.

Clause Number	New or Revised Clause

SCHEDULE 1

TERMS OF REFERENCE [AND DESIGN BRIEF] [Remove if you are not engaging a design consultant]

[Insert Terms of Reference [and Design Brief] [Remove if you are not engaging a design consultant]from RFP]

SCHEDULE 2

DETAILS

Commencement Date	The Service shall commence from [the Date of the Contract signing].
Day	The term "Day" shall refer to business days in the city of [insert name – that of the location of the Consultant generally]
Works	The term "Works" refer to [Design Consultancy Services for xxx].
Employer's Representative	The Employer's Representative is: [xxx]
Consultant's Representative	The Consultant's Representative is [insert name]
Communications	<p>Notices and other written communications shall be addressed to, as may be applicable:</p> <ul style="list-style-type: none"> • To the Employer: [xxx] • To the Employer's Representative: [xxx] • To the Consultant: [Insert Information of the Consultant] • To the Consultant's Representative: [Insert Information of the Consultant's Representative]
Liability Period	The Liability Period shall no lesser than [7 years] or as provided by Law.
Liability Limit	<p>The Consultant's contractual liability to the Employer shall be limited to the Agreed Compensation, as set out in Schedule 4 [Remuneration and Payment].</p> <p>The Consultant's liability for negligence, errors or omissions to the Employer shall be limited to [insert amount of max. limit under PI insurance]</p>

SCHEDULE 3

Equipment, Facilities, Personnel and Services of Others to be Provided by the Employer

SCHEDULE 4

REMUNERATION AND PAYMENT

- 1.1. In full consideration for the complete and satisfactory performance of the Services under this Contract, UNOPS shall pay the Consultant a fixed contract price of [insert currency and amount in figures and words], as per payment schedule below.
- 1.2. The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Consultant in the performance of the Contract.
- 1.3. Payments effected by UNOPS to the Consultant shall be deemed neither to relieve the Consultant of its obligations under this Contract nor as acceptance by UNOPS of the Consultant's performance of the Services.
- 1.4. UNOPS shall effect payments to the Consultant after acceptance by UNOPS of the invoices submitted by the Consultant to the address specified, upon achievement of the corresponding milestones and for the following amounts:
- 1.5. All payments shall be made by UNOPS to the following Bank account of the Consultant:
 [Name of the bank]
 [Account number]
 [Address of the bank]
- 1.6. The payment schedule should be as follows:
 [The following is an example

Milestone	Amount	Target date
Inception report	10% contract price	1 month after contract signing
Preliminary Engineering design Report and drawings (submit for review)	15% of contract price	2months after of contract signing
Detailed engineering design, Drawings (final), Bills of Materials, Specifications, Quality control & assurance plan, Operational & maintenance manual (Draft submitted for review)	30% of contract price	3 months after contract signing
Final detailed engineering design (All deliverables accepted and approved) (Final)	20% contract price	4 months after contract signing
Design Approval	15% contract price	After the design has been approved by the Client
First Half of Retention Amount	1 st half (5%) contract price	when a contractor is awarded the contract
Second Half of Retention Amount	2 nd half (5%) contract price	when works is substantially complete

SCHEDULE 5

TIME SCHEDULE FOR SERVICES

[The following is an example]

Milestone	Target date	Reviews
Inception report	1 month after contract signing	
Preliminary Engineering design Report and drawings (submit for review)	2 months after of contract signing	Submit for review
Detailed engineering design, Drawings (final), Bills of Materials, Quantities, Specification, Quality control & assurance plan, Operational & maintenance manual (Draft submitted for review)	3 months after contract signing	Submit for review
Final detailed engineering design (All deliverables accepted and approved) (Final)	4 months after contract signing	submit final deliverables
Design and Assistance during Contractor Procurement and Construction	When instructed or as required	

SCHEDULE 6

INSURANCES

[Insert schedule from RFP]

SCHEDULE 7

KEY PERSONNEL

Name	Title	Role