Module 5

UNICEF Request for Proposal for Services for Borehole Drilling Works
## Toolkit Orientation Table

### Introduction to the Toolkit
- Definition of terms
- Background to the Toolkit
- Overview of the five modules

### Module 1  UNICEF Principles for the Planning, Contracting and Management of Borehole Drilling Projects
- Clarifies stakeholder responsibilities
- Presents eight principles for the professionalization of borehole drilling
- Defines minimum standards and recommends procedures
- Explains different levels of drilling supervision

### Module 2  Procurement Considerations for Borehole Drilling Works
- Defines procurement process and responsibilities
- Provides guidance for risk management
- Compares two solicitation methods: ITB and RFPS
- Highlights key considerations during the pre-contractual, contracting and contract administration phases including the evaluation of technical and financial proposals and the payment schedule

### Module 3  Borehole Siting and Drilling Supervision Consultancy
- Provides template of Terms of Reference which includes:
  - Description of the assignment
  - Supervisor’s checklist
  - Deliverables and reporting requirements
  - Suggested Bill of Quantities for the consultancy services
  - Completion certificate templates
- Includes template for UNICEF Agreement for Borehole Siting and Drilling Supervision Consultancy Services

### Module 4  Terms of Reference for Borehole Drilling Works and Pump Supply and Installation
- Includes overview of how to select and specify handpumps and assure their quality
- Provides templates for:
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  - Terms of Reference for the Supply and Installation of Pumps
- Provides Technical Specifications for the borehole and a suggested format for the borehole completion record

### Module 5  UNICEF Request for Proposal for Services for Borehole Drilling Works
- Follows the UNICEF frame of Request for Proposal for Services in VISION and advises on options and elements
- Includes template Bill of Quantities for borehole drilling works
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### Abbreviations and Acronyms

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5.1 Introduction

The UNICEF Toolkit for Planning, Contracting and Management of Borehole Drilling (subsequently referred to as the Toolkit) has been developed to bring uniformity to practices and to guide UNICEF staff involved in borehole procurement and the supply of equipment, as well as contracting consultancy services for borehole siting and supervision. The Toolkit comprises five modules (see cover page).

Module 5 – Request for Proposal for Services (RFPS) provides guidance on how to customize the RFPS in VISION for the procurement of borehole drilling works. With Terms of Reference (ToR) developed, the RFPS process needs to define the framework of the solicitation and future collaboration with the supplier(s). The contract(s) that will be granted to the successful supplier(s) is(are) extracted from VISION.

The Request for Proposal for Services (RFPS) refers to the solicitation documents used for contracting of services in UNICEF. The structure of the RFPS is defined and extracted from VISION.

The first step in the RFPS process is to develop good Terms of Reference (ToRs). These are a section of the RFPS and detail all technical specifications. Module 4 of the Toolkit provides more information regarding TORs.

Module 5 of the Toolkit provides guidance on how to customize the RFPS in VISION for borehole procurement and construction:

- **HEADER TEXT** – customized in VISION
- **COVER PAGE** – customized in VISION
- **IMPORTANT – ESSENTIAL INFORMATION** – customized in VISION
- **PROPOSAL FORM** – customized in VISION
- **UNICEF SPECIAL TERMS AND CONDITIONS** – customized to the project
- **INSTRUCTION TO BIDDERS** – Generic information in VISION
- **GENERAL TERMS AND CONDITIONS (GTC) FOR SERVICES** – Generic information in VISION

Note that the General Terms and Conditions (GTC) and Bidder instructions already exist in VISION and therefore do not have to be added. Module 4 and Module 5 of the Toolkit provide guidance for Annexes that are part of the RFPS as indicated in Table 5.1.

Advice regarding Prequalification and Shortlisting of Suppliers is given in the Toolkit Module 2, section 2.4.4. Guidance on the RFPS Evaluation Assessment Criteria for borehole drilling works is provided in the Toolkit Module 2, section 2.5.5.

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1 VISION refers to UNICEF’s Virtual Integrated System of Information
Table 5.1 Where to find guidance on select RPFS sections and annexes

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5.2 Module Formatting

The Toolkit provides flexibility so that it can fit the circumstances of a particular project. It should be noted that national laws, standards and codes are to be adhered to, unless otherwise specified. Options for modification to some clauses to suit particular situations are shown with notes in [bold italics highlighted in grey]. Advice and key elements (such as relevant principles) to take into consideration are highlighted in blue text boxes throughout the document (e.g. Box X).

Box X Sample box containing advice and key elements that should be taken into consideration

When commencing with an Invitation to bid, UNICEF procurement......

5.3 Request for Proposal of Services – Template for Borehole Drilling Works

HEADER TEXT

The drilling, construction and development of [Insert number of boreholes] boreholes in [Insert the Districts], to be equipped with hand pumps and fully finished water abstraction points for the purpose of drinking water supplies

COVER PAGE

Interested Borehole Drilling Contractors are invited to submit their offers in a sealed envelope. Sealed Proposals should be sent/placed in the bid box (located in [Insert location]). Proposals forwarded by mail or courier services must contain written instructions on the external envelope that allows the receiving mail agents to place the envelope in the bid box. The mailing address for Proposals is: [Insert mailing address]
IMPORTANT – ESSENTIAL INFORMATION

Example 5.1 Extract of Important – Essential information, as customized in VISION

IMPORTANT - ESSENTIAL INFORMATION

The reference RFPS-DAN-2017-502433 must be shown on the envelope containing the proposal. Proposals must be sent separately and must not be included in packages containing samples.

The Request for Proposal for Services form must be used when replying to this invitation. You are welcome to enclose your own specifications, if necessary.

Proposals must be received at the above address by latest 16:00 hours (Copenhagen time) on 01 March 2017. Request for Proposal for Services received after the stipulated date and time will be invalidated. The proposal will be publicly opened at 10:30 hours (Copenhagen time) on 03 March 2017.

It is important that you read all the provisions of the Request for Proposal for Services to ensure that you understand and comply with the UNICEF’s requirements. Note that failure to submit compliant proposals may result in invalidation of your proposal.
PROPOSAL FORM

Example 5.2   Extract of Request for Proposal for Services Form, as customized in VISION

REQUEST FOR PROPOSAL FOR SERVICES FORM

This FORM must be completed, signed and returned to UNICEF. Proposal must be made in accordance with the instructions contained in this Request for Proposal for Services (RFP).  

TERMS AND CONDITIONS OF CONTRACT
Any Contract resulting from this RFP shall contain UNICEF General Terms and Conditions for Institutional and Corporate Contracts and any other Specific Terms and Conditions detailed in this RFP.  

INFORMATION
Any request for information regarding this RFP must be forwarded by email to the person who prepared this document, with specific reference to the RFP number.

The Undersigned, having read the Terms and Conditions of RFP No. RFPS-DAN-2017-502433 set out in the attached document, hereby offers to execute the services specified in this document.

Signature: ____________________________

Date: _______________________________

Name & Title: ____________________________

Company: ____________________________

Postal Address: ____________________________

Tel No: _______________________________

Fax No: _______________________________

E-mail Address: ____________________________

Currency of Proposal: ____________________________

Validity of Proposal: ____________________________

Please indicate which of the following Payment Terms are offered by you:

10 Days 3.0% 15 Days 2.5% 20 Days 2.0% 30 Days Net Other
UNICEF SPECIAL TERMS AND CONDITIONS

1. PROCEDURES AND RULES

1.1 Organizational Background

UNICEF is the agency of the United Nations mandated to advocate for the protection of children’s rights, to help meet their basic needs and to expand their opportunities to reach their full potential. Guided by the Convention on the Rights of the Child, UNICEF strives to establish children’s rights as international standards of behaviour towards children. UNICEF’s role is to mobilize political will and material resources to help countries ensure a “first call for children”. UNICEF is committed to ensuring special protection for the most disadvantaged children.

UNICEF carries out its work through its headquarters in New York, 8 regional offices and 125 country offices world-wide. UNICEF also has a research centre in Florence, a supply operation based in Copenhagen and offices in Tokyo and Brussels. UNICEF’s 37 committees raise funds and spread awareness about the organizations mission and work.

1.2 Purpose of the Request for Proposal for Services

The purpose of this RFPS is to invite proposals for the drilling, construction and development of [Insert number of boreholes] boreholes in [Insert the Districts], to be equipped with hand pumps and fully finished water abstraction points for the purpose of drinking water supplies.

The RFPS is open to experienced drilling Contractors who are legally registered in [insert country] with relevant licenses/permissions to drill in [insert country].

Box 4.1 Advice with respect to prequalification

It is highly recommended that the country office has a list of prequalified suppliers, which includes verification of legally registered and relevant licenses/permissions (see Module 2, section 2.4.4 for more details on pre-qualification and shortlisting).

1.3 RFPS and Desirable Contract Implementation Schedule

The schedule of the tendering process and targeted dates for execution of this RFPS are as follows, subject to revision depending on the programme and partners’ priority and availability:

1. Date and time of mandatory site visit(s): [insert day and time]
2. Last date to request clarifications/further information on RFPS: [insert day and time]
3. Contractor’s pre-tender meeting for clarification: [insert day and time]
4. Written answers to the questions sent to contractors: [insert day and time]
5. Closing date of proposal (RFPS) submission: [insert day and time]
6. Contract award notification to selected institution/contractor: [insert day and time]
7. Completion of all contracted works as indicated in the Terms of Reference and this RFPS: approximately [Insert a period] after signing of Contract. The actual work plan and schedule will be established based on the successful Proposal.
Box 4.2 Recommendations with respect to the bid duration, site visits and clarifications

**Bid duration** from publication to closing/opening should be a minimum of 3 weeks for noncomplex projects plus added time (minimum 1 week) for site visits and (minimum 1 week) for Clarifications. Clarifications should be done after the site visits to allow contractors to “digest” the information.

Different options are possible for site visits (i.e. visits to the locations where the boreholes are to be drilled):

a. Visits under supervision of UNICEF
b. Visits by contractors only

It is highly recommended that those visits are mandatory. In case of option b), it is then required to have a prove of visits (e.g. document stamped and signed by defined local authority).

Clarifications (Questions and Answers – Q&A) has to be taken in writing.

1.4 RFPS Clarification Policy

All requests for formal clarification or queries on this RFPS must be submitted in writing to [insert] or via e-mail to [insert]@unicef.org or via fax to [insert]. Please make sure that the e-mail or fax mentions the RFPS reference number.

A copy of the request for information should be emailed to [insert]@unicef.org.

Please be informed that if the question is of common interest, the answer will be shared with all potential RFPS Institutions/Contractors.

Requests for additional information/clarifications should reach UNICEF no later than [insert day and time] and will not be considered if received after this date.

All efforts will be made to provide additional information expeditiously, and answers will be provided no later than [insert day and time].

Bidders are expected to examine all instructions pertaining to the work. Failure to do so will be at the Bidder’s own risk and disadvantage.

Box 4.3 Recommendations for publishing responses to clarifications

In the case of an open bidding process, responses to clarifications (i.e. questions and answers – Q&A) will also be published on UNICEF [Country office name] website. This is not necessary where bidding is done through a shortlist of prequalified suppliers.

1.5 RFPS Response Format

The RFPS response shall be in accordance with the Instruction to Bidders of this RFPS. Proposals received in any other manner will be invalidated.

Full Proposals must be received no later than [Insert time] on [Insert date].

Offers delivered in a different form than prescribed in this RFPS, or which do not respect the required confidentiality, or received after the designated time and date, will be rejected. Any delays encountered in the mail delivery will be at the risk of the Bidder.

All references to descriptive materials should be included in the appropriate response paragraph, though the material/documents themselves may be provided as annexes to the RPFS response.
The Bidder must also provide sufficient information in the response to address each area of the Proposal Evaluation Criteria as presented in the RPFs to allow the evaluation team to make a fair assessment of the candidates and their proposal.

**Box 4.4 Recommendations for the language of the documents**

Documents shall be written in _____________ (e.g English/French). For convenience and practical purposes, some of the documents may be translated into __________ (e.g. Bahasa Indonesian). In case of discrepancies, the __________ (e.g English/French) version shall prevail.

### 1.6 Bidder's Response

#### 1.6.1 Formal submission requirements

The formal submission requirements as outlined in this Request for Proposal for Services must be followed, e.g. regarding form and timing of submission, no price information in the technical proposal, etc.

#### 1.6.2 Response Contents

The scanned copy of the RFPS Form shall be completed, duly signed and dated. The RFPS form must be submitted together with the response in hard copy in order to be accepted. E-mail responses will not be accepted.

Responses must be submitted in (4) four hard copies duly signed and dated, and accompanied by an electronic version of the Technical Proposal on a CD-ROM, flash/pen drive or any suitable electronic device and the Financial Proposal (Excel format) on another electronic device.

The response will be presented in an outer envelope, containing two inner envelopes.

The first inner envelope shall be marked “Technical Proposal”, sealed and addressed in the same manner as the outer envelope, and shall contain all documentation and an electronic device with the soft version of the Technical Proposal. The Form “REQUEST FOR PROPOSAL OF SERVICES FORM” must be completed, signed and attached to the Technical Proposal.

The second inner envelope shall be marked “Financial Proposal”, sealed and addressed in the same manner as the outer envelope. A separate electronic device with the soft version of the Financial Proposal must be included in the Financial Proposal’s envelope.

Sealed Proposals received prior to the stated closing time, and date will be kept unopened in the bid box. The Officer of the bid Opening Committee will open Proposals at the specified time, and no Proposal received thereafter will be considered.

UNICEF will accept no responsibility for a premature opening of a Proposal, or for one which is not properly addressed or identified.

Modification of sealed Proposals already submitted in a sealed envelope will be considered if notice is received by fax, email or mail prior to the stated closing time and date. Neither the revised proposal nor any cost amendment/information shall be shared at this point, and the revised offer shall be placed into the bid box with clear references (Modified Version of RFPS [insert code] for Contractor [insert number]).

#### 1.6.3 Mandatory Criteria

All mandatory criteria mentioned throughout this Request for Proposal for Services and Terms of Reference have to be addressed and met in the response.
1.6.4 Technical Proposal

The Technical Proposal should address all aspects outlined in this RFPS, paying close attention to the scope of work statement of work, technical specifications and evaluation criteria. The Terms of Reference set out the following:

1. Project Background
2. Description of the Assignment
3. Deliverables
4. Reporting Requirements
5. Location and Duration
6. Evaluation Process and Methods
7. Project Management
8. Payment
10. Annex – Format for Borehole Completion Record

The Bidders are free to propose innovative approaches that can meet the deliverables set out in the Terms of Reference as long as the completed works are in line with the technical specifications.

All references to materials should be included in the appropriate response paragraph, though the material/documents themselves may be provided as annexes to the proposal/response.

Technical Proposals must be complete and provide all relevant support documentation to enable the RFPS Evaluation Team to adequately assess and evaluate the proposal.

No financial information should be contained in the technical proposal.

1.6.5 Financial Proposal

The Financial Proposal must include costs for all the services to be provided, taking into consideration the Evaluation Criteria.

The currency of the proposal shall be in [USD or local currency]. The price is not subject to any adjustment or revision because of price or currency fluctuations.

The Bill of Quantities (Annex 5.1) forms the basis of the Financial Proposal and shall be priced. Contractors are requested to accept the payment schedule provided the ToR.

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2 Evaluation Criteria are developed for each RFPS. The Toolkit, Module 2, Table 2.5 provides an example.
Box 4.5  Recommendations for payment for completed boreholes

Payment for completed boreholes will be according to a bill of quantities based on the result of siting of the boreholes and the preliminary borehole design. Please refer to Principle 6: Payment for boreholes summarized below and detailed in the Toolkit – Module 1: Introduction, and adapt to local context.

Principle 6: Payment for boreholes

Payment for completed boreholes will be according to a bill of quantities based on the recommendations from the siting exercise and the preliminary borehole design, i.e. the probable borehole depth, diameter and lining materials and conditions of geological formations. Payments will be made as per the actual works done and quantities of materials used (rather than as a lump sum).

Where boreholes are declared unacceptable on completion of drilling through inadequate water either in quantity or quality but through no fault of the driller, the driller will be paid according to the measureable quantities of items of work completed up to the point of the borehole being declared unacceptable. This includes boreholes where geophysical surveys have been conducted and where boreholes do not have sufficient yield or safe water quality.

1.6.6  Bill of Quantities

The Bill of Quantities (Annex 5.1) provides a format for the bidders to set out the price for various items. Bidders should review the Technical Specifications and other sections of the bid documents to know the full scope of the requirements included in each item prior to filling in the rates and prices in the Bill of Quantities.

Rates and prices inserted in the Bill of Quantities should cover the Works, finished and complete in all respects. The Bidder should take full account in his/her rates and prices of all the requirements and obligations, expressed or implied in all parts of the Contract, together with all incidental and contingent expenses and risks of every kind involved in the proper construction of the Works. No claim for additional payment will be allowed for any error or misunderstanding in this respect.

The entered rates and prices shall be deemed to cover the full scope of Works, including overheads and profit.

If Bidders are unclear or uncertain as to the scope of any item, they should seek clarification prior to submitting their bid.

All drilling records, maps, drawings, photographs, plans, reports, recommendations and documents and all other data compiled by or received by the Drilling Contractor under this Contract shall be the property of the Client.

1.6.7  Price Proposal

The price proposal should be as per but not limited to the requirements contained in the scope of work and Terms of Reference of this RFPS.

Prices shall be filled in indelible ink, and any alterations necessary due to errors shall be initialled by the Bidder.

Prices shall be fixed and firm for the duration of the Contract. Prices shall be quoted in the manner indicated and in the currencies specified in the RFPS in the bidding documents. For each item, bidders shall complete each appropriate column in the respective Bills, giving the price breakdown as indicated in the Bill of Quantities. Prices given in the Bill of Quantities against each item shall be for the scope covered by that item as detailed in the Technical Specifications, including in drawings or elsewhere in the bidding documents.

Where there are differences between the total of the amounts given under the column for the unit rates and the amount given under the TOTAL, the former shall prevail and the latter will be corrected accordingly.
Where there are discrepancies between amounts stated in figures and amounts stated in words, the amounts stated in words shall prevail.

Items left blank will be deemed to have been included in other items. The TOTAL for each Schedule and the TOTAL of the Grand Summary shall be deemed to be the total price for executing the Works in accordance with the Contract, whether or not each individual item has been priced.

The Bill of Quantities will be checked for arithmetic error. Where an error is found, the bidder shall be informed of the discrepancy. If the bidder is not in agreement, the bid shall be dropped. Where the bidder is in agreement their written acceptance shall be part of the Contract document.

No claim will be considered for further payment in respect of any work or method of execution which may be described in the Contract or is inherent in the construction of the Work as detailed in the drawings on account of:

a) items having been omitted from the Bills of Quantities
b) any omission from the wording of the items or from clauses
c) no presentation of Certificate of Substantial Completion or Certificate of Final Completion

Payment shall be on the unit rate as in the bill of quantities. The drilling contractor shall be paid unit prices per metre in accordance with the actual depth drilled on the ratios as set out in the Bill of Quantities. The depths given in the Bill of Quantities are indicative only. The accuracy of the quantities given in the Bill of Quantities is not guaranteed, and quantities given should not be taken as a guide for ordering materials.

Unless expressly stated otherwise, all rates and prices entered in the Bills of Quantities will be deemed to have included the following:

a) labour and all costs in connection with the execution of the Works and the correction of defects until the expiry of the defects liability period
b) drilling, borehole development and pumping test equipment and all costs in connection with it
c) sampling and testing materials and goods, testing workmanship, providing, storing, packing and transporting samples to and from the place of testing in accordance with the Specifications
d) supplying, erecting, installing or placing of materials and goods in position
e) safe disposal of surplus and unsuitable materials and goods and excavated materials, including stacking, storing, loading, transporting and unloadings
f) cleaning and restoration of the site to its original state at the end of the works, including fixing any damage or alterations that may occurred to public or private property
g) all general obligations, liabilities and risks involved in the execution and maintenance of the works set forth or reasonably implied in the documents on which the bid is based
h) establishment charges, overheads and profit
i) complying with all the requirements of the Contract Documents

The rates and prices inserted by the Bidder shall apply throughout the Contract to any location within the Contract and to any additional work ordered by the Client (e.g. additional boreholes or deeper boreholes).

The total quantity included in the final measurement of each item shall be measured to the nearest integer relative to that item, or to one decimal place if so indicated in the Bills of Quantities.

The sums inserted in the Bills of Quantities shall include for levelling, removing surplus material, providing and maintaining fencing and removal on completion, and access and drainage where specified, and for reinstating the Works areas to their original condition upon completion.
The Bidder is deemed to have included a record keeper in the price of personnel.

All prices/rates quoted must be exclusive of all taxes as UNICEF is a tax-exempt organization.

1.6.8 Travel Costs

The Institutions/Contractors will be responsible for their own travel costs to conduct the field visits.

1.6.9 Other considerations

The Bidder shall be deemed to have taken into account all of the following in his/her bid prices and his/her construction programme:

a) all recognized holidays, festivals, religious and other customs

b) the weather conditions in the anticipated drilling period

1.7 Confidential Information

Information which the Bidder considers proprietary should be clearly marked “proprietary”, if any, next to the relevant part of the text, and UNICEF will treat such information accordingly.

1.8 Rights of UNICEF

UNICEF reserves the right to accept any proposal, in whole or in part; or, to reject any or all proposals. UNICEF reserves the right to invalidate any Proposal received from a Bidder who has previously failed to perform properly or complete contracts on time, or a Proposal received from a Bidder who, in the opinion of UNICEF, is not in a position to perform the contract. UNICEF shall not be held responsible for any cost incurred by the Bidder in preparing the response to this Request for Proposal for Services. The Bidder agrees to be bound by the decision of UNICEF as to whether their proposal meets the requirements stated in this Request for Proposal for Services. Specifically, UNICEF reserves the right to:

- split the award among multiple contractors if benefits to be gained are in the interest of the Project or UNICEF and if the actual completion can be achieved in a shorter time (this will require a process of negotiation with respect to the costs of mobilization to base camp)
- contact any or all references supplied by the Bidder(s)
- request additional supporting or supplementary data (from the Bidder[s])
- arrange interviews with the Bidder(s)
- visit and inspect the contractor’s premises
- reject any or all proposals submitted
- accept any proposals in whole or in part
- negotiate with the service provider(s) who has/have attained the best rating/ranking, i.e. the one(s) providing the overall best value proposal(s)
- contract any number of bidders as required to achieve the overall evaluation objectives

1.9 Limitations on Subcontracting and Substitution of CVs

All substitution of CVs (personnel) must be authorized by the Client. Subcontracting is limited to 30% of the contract’s total amount and must first be authorized by the Client. The Bidder shall indicate if he/she intends to subcontract any part of the works and, if so, clearly define which items, as detailed in the Bill of Quantities they are referring to. Bidder(s) shall list the names and addresses of his/her proposed subcontractors and the
works to be performed by each, temporary facilities to be provided by each, with full description, availability, location and condition of each major piece of equipment.

The proposed subcontractor’s company profile in accordance with the evaluation criteria and previous experiences of similar works shall also be listed in the technical proposal. The Contractor shall obtain the prior written approval and clearance of Clients for all sub-contractors.

The approval of the Client of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and in conformity with the provisions of this Contract. Where such an Agreement is entered into, the Client shall be charged at the cost rate for the subcontractor services. Were Contractor(s) found to have received any profit from such an Agreement, such action would constitute breech of this Contract.

1.10 Proposal Opening

Due to the nature of this RFPS, there will be no public opening of proposals.

1.11 Property of UNICEF

This RFPS, along with any responses there to, shall be considered the property of UNICEF, and the proposals will not be returned to their originators.

1.12 Validity

The Proposal must be valid for a minimum of ninety days (90) days from the date of opening of this RFPS and must be signed by an authorized representative of the legal entity submitting the proposal. Bidders are requested to indicate the validity period of their proposal in the Proposal Form. UNICEF may also request for an extension of the validity of the proposal.

1.13 Full right to use and sell

The Bidder warrants that he/she has not and shall not enter into any agreement or arrangement that restrains or restricts UNICEF rights to use, sell, dispose of or, otherwise, deal with any service or outcome that may be acquired under any resulting Contract.

1.14 Payment Terms

Payment will be made only upon UNICEF’s acceptance of the work performed. The terms of payment are net 30 days after receipt of invoice and acceptance of work. Payment will be effected by bank transfer in the currency of billing.

Financial proposals should include any offered discounts based on earlier payment, if available. The Bidder may offer early payment discounts, i.e. payment within a specific period of time faster than UNICEF’s standard payment terms of 30 days.

1.15 Payments for Variations

The Drilling Contractor shall provide the Designated Representative with a quotation for carrying out the Variation when requested by the Designated Representative. The Designated Representative shall assess the quotation, which shall be given within seven days of the request.

If the work in the Variation corresponds with an item in the Bill of Quantities, the rate in the Bill of Quantities shall be used.
If the Drilling Contractor’s quotation is unreasonable, the Designated Representative may order the Variation and make a change to the contract price which shall be based on the Designated Representative’s own forecast of the effects of the Variation on the Contractor’s costs.

1.16 Late Delivery

Without limiting any other rights or obligations of the parties hereunder, if the contractor is unable to deliver the services by the delivery date stipulated in the Contract, the contractor shall:

- immediately consult with UNICEF to determine the most expeditious means for delivering the services
- and (ii) use an expedited means of delivery, at the contractor’s cost, if reasonably so requested by UNICEF

1.17 Failure to Perform

In case of failure by the contractor to perform under the terms and conditions of the Contract, UNICEF may, after giving the contractor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

a) procure all or part of the services from other sources, in which event UNICEF may hold the contractor responsible for any excess cost occasioned thereby. In exercising such rights UNICEF shall mitigate its damages in good faith;

b) refuse to accept delivery of all or part of the services;

c) terminate the Contract without any liability for termination charges or any other liability of any kind;

d) for late delivery of services or for services which do not meet UNICEF’s Terms of Reference and are therefore rejected by UNICEF, UNICEF will claim liquidated damages from the contractor and deduct 0.5% of the value of the services pursuant to a Contract per additional day of delay, up to a maximum of 10% of the value of the Contract. The payment or deduction of such liquidated damages shall not relieve the contractor from any of its other obligations or liabilities pursuant to this Contract.

1.18 Contractual Terms and Conditions

The UNICEF General Terms and Conditions for Services are attached and will form part of any contract resulting from this RFP.

1.19 Conflict of Interest

In respect of all aspects of the RFP, the Bidder must disclose to UNICEF any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest. In particular, the Bidder must disclose to UNICEF if:

a) it or any of its affiliates is, or has been in the past, associated with an organisation that has been engaged by UNICEF to provide services for the preparation of the design, specifications, Terms of Reference, cost analysis/estimation, and other documents to be used for the procurement of the services requested under this RFP;

b) it has been involved in the preparation and/or design of the programme/project related to the services requested under this RFP;

c) any UNICEF official or professional under contract with UNICEF has an interest of any kind in the Bidder’s business or any kind of economic ties with the Bidder (whether directly or indirectly);

d) any of the Bidders’ owners, part-owners, officers, directors, controlling shareholders or other key
personnel have close family ties with any UNICEF staff or professional under contract with UNICEF; or
e) there are any other circumstances that could potentially lead to actual or perceived conflict of interest or unfair competition practices.

In order to avoid any actual or perceived conflict of interest and in accordance with best public procurement practice, the vendor awarded the contract for these services (and its affiliates) will not be entitled to bid in response to any request for proposals issued subsequent to and in consequence of the services contemplated by this RFPS. For this purpose, "affiliates" includes any entity that directly or indirectly controls the vendor, is controlled by the vendor or is under common control with the vendor.

If the Bidder is uncertain as to whether a situation constitutes a potential, perceived or actual conflict of interest, he/she must disclose the situation to UNICEF.

All Bidders found to have a conflict of interest may, depending on the nature of the conflict of interest, and at UNICEF’s sole discretion, be disqualified from this RFPS process.

1.20 Ethics, Unethical Behaviour, Corrupt and Fraudulent Practices

UNICEF strictly enforces a policy of zero tolerance concerning unethical, unprofessional or fraudulent acts. Accordingly, companies or individuals that are found to have undertaken unethical, unprofessional or fraudulent activities will be suspended or forbidden from business relations with UNICEF.

UNICEF requires that all Institutions/Contractors associated with this Request for Proposal observe the highest standard of ethics during procurement and execution of the work, fully complying with international Codes of Conduct and in particular, but without limiting the foregoing, Institutions/Contractors are expected to conduct themselves in a manner consistent with the Standards of Conduct in the International Civil Service, UNICEF Standards of Electronic Conduct and the requirements set forth in the Secretary General's Bulletin on Special Measures for Protection from Sexual Exploitation and Sexual Abuse, which are incorporated by reference into the contract between the Institution and UNICEF.

1.21 Guidelines on Gifts and Hospitality

Institutions/Contractors shall not offer gifts or hospitality to UNICEF staff members. Recreational trips to sporting or cultural events, theme parks or offers of holidays, transportation, or invitations to lunches or dinners are also prohibited.

In pursuance of these policies UNICEF defines for the purpose of this provision the terms set forth as follows:

1. Corrupt practice means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in the procurement process or in the execution of a contract.

2. Fraudulent practice means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the client, and includes collusive practice among Institutions/Contractors (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the client of the benefits of free and open competition.

3. UNICEF will reject a proposal for award if it determines that the selected contractor(s) have engaged in any corrupt or fraudulent practices in competing for the contract in question.

4. UNICEF will declare a contractor ineligible, either indefinitely or for a stated period of time, to be awarded a UNICEF-financed contract if at any time it determines that it has engaged in any corrupt or fraudulent practices in competing for or in executing a UNICEF-financed contract.
1.22 Award Notification (at discretion of Country Office)

[Insert Country Office publishing procedures for award notification].

1.23 Fossils and Cultural Heritage.

Any fossils, coins, articles of value or antiquity and structures or things of geological, archaeological or cultural interest discovered on site shall, for the purpose of this Contract, be deemed to be the property of UNICEF. The Contractor shall take all reasonable precautions to prevent removal or damage to any such article or thing, and shall immediately notify UNICEF of such discovery. UNICEF shall, in each case, decide on course of action for dealing with what has been discovered.

1.24 Checklist for submission of proposals

- Envelope for technical proposal
  - Technical proposal [it does not contain prices]
  - CD, Flash disk or any suitable device with electronic files
  - Request for Proposal for Services (RPFS) PROPOSAL FORM filled in and signed
  - Envelope is sealed
  - Envelope is marked as follows:
    - Name of company, RFPS number and subject, opening date and time, “Technical Proposal”

- Envelope for Financial Proposal
  - Financial proposal
  - CD, Flash disk or any suitable device
  - Envelope is sealed
  - Envelope is marked as follows:
    - Name of company, RFPS number and subject, opening date and time, “Financial Proposal”

- 1 outer enveloped
  - Containing
    - Technical Proposal Envelope
    - Financial Proposal Envelope
  - Envelope is sealed
  - Envelope is marked with details of the RFPS

INSTRUCTIONS TO BIDDERS

The instructions to bidders, which are standard from VISION, are reproduced in Annex 5.2

GENERAL TERMS AND CONDITIONS

The General Terms and Conditions (Version 2017), which are standard from VISION, are reproduced in Annex 5.3
Annexes – Toolkit Module 5

Annex 5.1  Bill of Quantities

See table below for further guidance.

<table>
<thead>
<tr>
<th>No</th>
<th>Description</th>
<th>Unit</th>
<th>Qty</th>
<th>Unit rate [insert currency]</th>
<th>Amount [insert currency]</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Mobilisation / Demobilisation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.1 Mobilisation from place of origin to the project area</td>
<td>LS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.2 Demobilisation from the project area to the place of origin</td>
<td>LS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>1.3 Moving between drill sites</td>
<td>km</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Borehole Siting [Delete if not applicable]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.1 Hydrogeological investigation in sedimentary terrain</td>
<td>LS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.2 Hydrogeological investigation and geophysical survey in basement complex</td>
<td>LS</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Borehole Drilling [Delete any of the scenarios below if not applicable]</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.1 Drilling in overburden and unconsolidated sedimentary formations for the installation of nominal 110mm diameter casing and screen</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.2 Drilling in compacted sediments for the installation of nominal 110mm diameter casing and screen</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.3 Drilling in alluvial deposits for the installation of nominal 110mm diameter casing and screen</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>3.4 Drilling in hard rock formations for the installation of nominal 110mm diameter casing and screen</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Borehole lining and installation</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.1 Supply and installation of nominal 110 mm diameter PVC casings</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.2 Supply and installation of nominal 110 mm diameter PVC screen</td>
<td>m</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.3 Supply and installation of gravel pack or filter pack</td>
<td>m²</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.4 Backfill borehole annulus</td>
<td>No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.5 Supply cement, mix and place grout as specified</td>
<td>No.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>4.6 Backfill and seal abortive borehole as directed by the Supervisor</td>
<td>No</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Well development, pumping test, water quality analysis and well cap</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Description</td>
<td>Unit</td>
<td>Qty</td>
<td>Unit rate [insert currency]</td>
<td>Amount [insert currency]</td>
</tr>
<tr>
<td>-----</td>
<td>------------------------------------------------------------------------------</td>
<td>------------</td>
<td>-----</td>
<td>----------------------------</td>
<td>-------------------------</td>
</tr>
<tr>
<td>5.1</td>
<td>Carry out cleaning, development by jetting and airlifting</td>
<td>hour</td>
<td>no</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.2</td>
<td>Carry out pumping test and recovery measurements as specified</td>
<td>no</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.3</td>
<td>Carry out water quality analysis</td>
<td>no</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>5.4</td>
<td>Supply and install well cap as specified</td>
<td>no</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

6  Civil Works, installation of handpumps and disinfection

| 6.1 | Construction of civil works                                                 | no         |     |                            |                         |
| 6.2 | Supply and installation of handpumps to maximum depth of [insert] m in communities | m          |     |                            |                         |
| 6.3 | Carry out borehole and handpump disinfection                                | no         |     |                            |                         |

7  Set of Tools and Manuals

| 7.1 | Provide training for community members, area pump menders and District Council members (as appropriate) | no         |     |                            |                         |
| 7.2 | Supply set of tools and manuals for area pump menders and caretakers (as appropriate) as per UNICEF specifications | no         |     |                            |                         |
| 7.3 | Training of Pump Caretakers and Water User’s Committee members              | no         |     |                            |                         |

8  Reporting requirements

| 8.1 | Prepare and submit final borehole completion reports as specified           | copy       |     |                            |                         |

Total USD
Guidance for Bill of Quantities

The table below provides guidance with respect to each item in the Bill of Quantities. This may be included in the RPFS to provide clarification for bidders.

<table>
<thead>
<tr>
<th>Item</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 Mobilisation / Demobilisation</td>
<td>The lump sum covers the mobilization to the drilling area including transport of the drilling unit and all other equipment, plant and materials from the point of origin to the base camp area and movements between sites within the project area. The necessary insurances of the whole equipment, plant and materials are included in the lump sum. The lump sum covers demobilization, including striking the base camp, cleaning the site of the base camp and transport of the drilling unit and all other equipment, plant and materials from the base camp to the next base camp or to the place of origin. The necessary insurances of the whole equipment, plant and materials are included in the lump sum. The mobilisation cost shall also include the cost of obtaining all the necessary permits.</td>
</tr>
<tr>
<td>1.3 Moving between drill sites</td>
<td>The Drilling Contractor shall be paid a unit rate for moving all equipment, vehicles, supplies and plant associated with the drilling unit for a move to the next drill site and for setting up at the next drill site.</td>
</tr>
<tr>
<td>2 Borehole Siting</td>
<td>Where siting is the responsibility of the Drilling Contractor, the contractor shall be paid a lump sum for each site completed and the report approved by the Supervisor. The Client shall not pay for unnecessary geophysics.</td>
</tr>
<tr>
<td>3 Borehole Drilling</td>
<td>The Drilling Contractor shall be paid unit prices per metre in accordance with the depth drilled as set out in the bill of quantities. The unit prices per metre shall include all costs associated with the drilling, drilling water, drilling additives, surface casing, collection of drill cutting samples, gravel packing and development, and preparation of daily drilling reports. The Drilling Contractor shall be paid in accordance with the actual depth drilled on the rates set out in the bill of quantities. The depths given in the bill of quantities are indicative only.</td>
</tr>
<tr>
<td>3.1 Drilling in unconsolidated and sedimentary formations</td>
<td>Drilling in unconsolidated and sedimentary formations the drilling will require a mud rotary technique. Temporary casing may be required in the upper horizons.</td>
</tr>
<tr>
<td>3.2 Drilling in basement rocks and compacted sediments</td>
<td>Drilling in basement rocks and compacted sediments – in some situations, the upper weathered zone may be unstable and will require temporary casing; the upper section must then be drilled at appropriate diameter for installation of temporary casing which will allow completion of the borehole. Note: the drilling diameter refers to the lower section of the borehole and not the upper section.</td>
</tr>
</tbody>
</table>
### 4 Borehole lining and installation

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>4.1 Supply and installation of nominal 110 mm diameter PVC casings</td>
<td>The price covers supply and installation per metre of nominal 110mm diameter PVC casing with flush threaded joints.</td>
</tr>
<tr>
<td>4.2 Supply and installation of nominal 110 mm diameter PVC screen</td>
<td>The price covers supply and installation per metre of 110 mm diameter PVC screens, slots 0.25 mm, 0.5 mm and 1 mm with flush threaded joints.</td>
</tr>
<tr>
<td>4.3 Supply and installation of gravel pack or filter pack</td>
<td>The price covers supply and installation of well sorted, well washed rounded silica gravel without micas, clays or other weathering products or contaminants. The price is per borehole.</td>
</tr>
<tr>
<td>4.5 Backfill borehole annulus AND 4.6 Supply cement, mix and place grout as specified</td>
<td>Complete the borehole with impervious clay plug and cement grout into the borehole annulus to form the sanitary seal. The price shall be per borehole.</td>
</tr>
</tbody>
</table>

### 5 Well development, pumping test, water quality analysis and well cap

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>5.1 Carry out cleaning, development by jetting and airlifting</td>
<td>The price shall be lump sum and shall be paid when the supervisor certifies adequate development, i.e. when the water is clear and sand-free.</td>
</tr>
<tr>
<td>5.2 Carry out pumping test and recovery measurements as specified</td>
<td>The price shall be per borehole.</td>
</tr>
<tr>
<td>5.3 Carry out water quality test</td>
<td>Water quality test shall be carried out in laboratories approved by the supervisor</td>
</tr>
</tbody>
</table>

### 6. Civil works and Installation of handpumps

<table>
<thead>
<tr>
<th>Task</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1 Construction of civil works</td>
<td>The construction of the civil works concrete platform is to be carried out as specified in the technical specifications. The price covers all activities.</td>
</tr>
<tr>
<td>6.2 Supply and installation of handpumps to maximum depth of [inset] m in communities</td>
<td>The installation must be carried out as in the technical specifications.</td>
</tr>
</tbody>
</table>
Annex 5.2 Instructions to Bidders (Version: RFPS-DAN -2017-502433)

1. MARKING AND RETURNING OFFERS

1.1 Offers shall be submitted in the manner indicated in the cover page of this document.

1.2 The Bid Form must be signed, and submitted together with the offer. The Bid Form should be signed by the duly authorized representative of the submitting company.

1.3 Proposers should note that offers received in the following manners will be invalidated:
   a) without the Bid number;
   b) with incorrect address than prescribed in the Bid documents;
   c) in a different form than prescribed in the Bid documents;
   d) do not follow the required confidentiality;
   e) received after the stipulated closing time and date;
   f) failure to quote in the currency stated in the Bid documents.

1.4 SEALED OFFERS

1.4.1 Sealed Offers must be securely closed in the suitable envelope, clearly MARKED on the outside with the BID NUMBER, and despatched to arrive at the UNICEF office NO LATER THAN the indicated CLOSING TIME AND DATE.

1.4.2 Technical Offer and Financial Offer must be sent in separate envelopes clearly indicated with the BID NUMBER, COMPANY NAME and a) Technical offer or b) Financial offer.

1.4.3 The Technical and Financial offers in response to the Request for Proposal (for Services) must be delivered in three (3) copies each unless otherwise specified in the Specific Terms and Conditions.

1.4.4 The Bid Form must be signed, and submitted together with the offer. The Bid Form should be signed by the duly authorized representative of the submitting company.

2. OPENING OF OFFERS

2.1 In case when a Public Opening is held, the invited proposers, or their authorized representative, may attend the public bid opening at the time, date and location specified in the bid documents. Proposers should note that the Bid Opening is the only time and place where information related to pricing from competitors is available.

3. REQUEST FOR INFORMATION

3.1 Any request for information regarding the specifications should be sent to the Contracting Officer indicated in this Bid document, and NOT to the Bid Section.

3.2 Inquiries received less than seven (7) calendar days prior to the Proposal closing date cannot be guaranteed any response. Only written inquiries will be entertained.

4. ERROR IN OFFERS

4.1 Proposers are expected to examine all requirements and instructions pertaining to the work or Bid. Failure to do so will be at Proposers own risk.

5. CORRECTIONS

5.1 Erasures or other corrections in the offer must be explained with the signature of the Proposer shown alongside.
6. MODIFICATION AND WITHDRAWAL

6.1 All changes to an offer must be received prior to the closing time and date. It must be clearly indicated that it is a modification and supersedes the earlier offer, or state the changes from the original offer.

6.2 Offers may be withdrawn on e-mailed, faxed or written request received from Proposers prior to the closing time and date. Negligence on the part of the Proposer confers no right for the withdrawal of the offer after it has been opened.

7. VALIDITY OF OFFERS

7.1 Offers should be valid for a period of not less than 90 days after bid opening, unless otherwise specified in the Specific Terms and Conditions. Proposers are requested to indicate the validity period of their offer. UNICEF may request the validity period to be extended.

8. INCOTERMS (if applicable)

8.1 Failure to quote in accordance with the requested INCOTERMS may result in invalidation of the Proposal.

9. COUNTRY OF ORIGIN (if applicable)

9.1 Items produced in countries other than that of the Bidder must be indicated, stating the country of origin. Bidders may be required to submit a Certificate of Origin of Goods issued by the Chamber of Commerce or other equivalent authority.

10. SUPPLIER REGISTRATION AND EVALUATION

10.1 UNICEF is part of the United Nations Global Marketplace (UNGM). Accordingly, all bidders must apply to become a UNICEF supplier and this is done via the UNGM website at http://www.ungm.org. The assessment of the application is based on the relevance of the products to UNICEF. Please note that a UNGM registration should be completed as soon as possible, and before an award can be made.

11. ANSWERING SHEETS

Only the forms and sheets provided in the bid documents should be used to present the various aspects of the Proposal. Supplemental information can be provided on each of the answering sheets when requested in the bid documents.

12. Bid document TERMS

The bid documents, along with any Proposal thereto, shall be considered the property of UNICEF and the Offers will not be returned to their originators.

In submitting the offer, the Proposer agrees to acceptance of the decision of UNICEF as to whether the offer meets the minimum requirements stated in the bid documents; and the evaluation.

Information provided in the offer will be treated as confidential unless otherwise noted by the Proposer.

13. RIGHTS OF UNICEF

13.1 UNICEF reserves the right to INVALIDATE any offer for reasons mentioned above, and, unless otherwise specified by UNICEF or by the Bidder, to accept any item in the offer.

13.2 UNICEF reserves the right to INVALIDATE any offer received from a Bidder who, in the opinion of UNICEF, is not in a position to perform the contract.
1. DEFINITIONS AND UNICEF SUPPLY WEBSITE

1.1 In these General Terms and Conditions (Services), the following terms have the following meaning:

(a) “Affiliates” means, with respect to the Contractor, any of its corporate affiliates or associates, including parent entities, subsidiaries, and other entities in which it owns a substantial interest.

(b) “Confidential Information” means information or data that is designated as confidential at the time of exchange between the Parties or promptly identified as confidential in writing when furnished in intangible form or disclosed orally, and includes information, the confidential or proprietary nature of which, is or should be reasonably apparent from the inherent nature, quality or characteristics of such information.

(c) “Contract” means the services contract that incorporates these General Terms and Conditions of Contract (Services). It includes contracts for services issued by UNICEF, whether or not they are issued under a long-term arrangement or similar contract.

(d) “Contractor” means the contractor named in the Contract.

(e) “Deliverables” means the work product and other output of the Services required to be delivered by Contractor as part of the Services, as specified in the relevant section of the Contract.

(f) “Disabling Code” means any virus, back door, timer or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code that may have the consequence (whether by design or unintentionally) of disrupting, disabling, harming, circumventing security controls or otherwise impeding in any manner the normal operation or performance of (i) any software or service or (ii) any UNICEF information system or network.

(g) “End User” means, in the event that the Services or Deliverables involve the use of any information systems, any and all UNICEF employees, consultants and other personnel and any other external users collaborating with UNICEF, in each case, authorized by UNICEF to access and use the Services and/or Deliverables.

(h) “Fee” is defined in Article 3.1.

(i) “Host Government” means a Government with which UNICEF has a programme of development cooperation, and includes a Government of a country in which UNICEF provides humanitarian assistance.

(j) Contractor’s “Key Personnel” are: (i) Personnel identified in the proposal as key individuals (as a minimum, partners, managers, senior auditors) to be assigned for participation in the performance of the Contract; (ii) Personnel whose resumes were submitted with the proposal; and (iii) individuals who are designated as key personnel by agreement of the Contractor and UNICEF during negotiations.

(k) “Parties” means the Contractor and UNICEF together and a “Party” means each of the Contractor and UNICEF.

(l) Contractor’s “Personnel” means the Contractor’s officials, employees, agents, individual subcontractors and other representatives.

(m) “Security Incident” means, with respect to any information system, service or network used in the delivery of the Services or Deliverables, one or more events that (a) indicates that the security of such information system, service, or network may have been breached or compromised and (b) that such breach or compromise could very likely compromise the security of UNICEF’s Confidential Information or weaken or impair UNICEF’s operations. Security Incident includes any actual, threatened or reasonably suspected unauthorized access to, disclosure of, use of or
acquisition of UNICEF Data that compromises the security, confidentiality, or integrity of the UNICEF Data, or the ability of UNICEF or End Users to access the UNICEF Data.

(n) “Services” means the services specified in the relevant section of the Contract.

(o) “UNICEF Data” means any and all information or data in digital form or processed or held in digital form that (a) are provided to the Contractor by, or on behalf of, UNICEF and/or End Users under the Contract or through UNICEF’s and/or End Users’ use of the Services or in connection with the Services, or (b) are collected by the Contractor in the performance of the Contract.

(p) “UNICEF Supply Website” means UNICEF’s public access webpage available at http://www.unicef.org/supply/index_procurement_policies.html, as may be updated from time to time.

1.2 These General Terms and Conditions of Contract, UNICEF’s Policy Prohibiting and Combatting Fraud and Corruption, the UNICEF’s Policy on Conduct Promoting the Protection and Safeguarding of Children, the UN Supplier Code of Conduct and UNICEF’s Information Disclosure Policy referred to in the Contract, as well as other policies applicable to the Contractor, are publicly available on the UNICEF Supply Website. The Contractor represents that it has reviewed all such policies as of the effective date of the Contract.

2. PROVISION OF SERVICES AND DELIVERABLES; CONTRACTOR’S PERSONNEL; SUB-CONTRACTORS

 Provision of Services and Deliverables

2.1 The Contractor will provide the Services and deliver the Deliverables in accordance with the scope of work set out in the Contract, including, but not limited to, the time for delivery of the Services and Deliverables, and to UNICEF’s satisfaction. Except as expressly provided in the Contract, the Contractor will be responsible at its sole cost for providing all the necessary personnel, equipment, material and supplies and for making all arrangements necessary for the performance and completion of the Services and delivery of the Deliverables under the Contract.

2.2 The Contractor acknowledges that, other than as expressly set out in the Contract, UNICEF will have no obligation to provide any assistance to the Contractor and UNICEF makes no representations as to the availability of any facilities, equipment, materials, systems or licenses which may be helpful or useful for the fulfillment by the Contractor of its obligations under the Contract. If UNICEF provides access to and use of UNICEF premises, facilities or systems (whether on site or remotely) to the Contractor for the purposes of the Contract, the Contractor will ensure that its Personnel or sub-contractors will, at all times (a) use such access exclusively for the specific purpose for which the access has been granted and (b) comply with UNICEF’s security and other regulations and instructions for such access and use, including, but not limited to, UNICEF’s information security policies. The Contractor will ensure that only those of its Personnel that have been authorized by the Contractor, and approved by UNICEF, have access to UNICEF’s premises, facilities or systems.

2.3 The Contractor will use its best efforts to accommodate reasonable requests for changes (if any) to the scope of work of the Services or time for provision of the Services or delivery of the Deliverables. If UNICEF requests any material change to the scope of work or time for delivery, UNICEF and the Contractor will negotiate any necessary changes to the Contract, including as to the Fee and the time schedule under the Contract. Any such agreed changes will become effective only when they are set out in a written amendment to the Contract signed by both UNICEF and the Contractor. Should the Parties fail to agree on any such changes within thirty (30) days, UNICEF will have the option to terminate the Contract without penalty notwithstanding any other provision of the Contract.

2.4 The Contractor will neither seek nor accept instructions from any entity other than UNICEF (or entities authorized by UNICEF to give instructions to the Contractor) in connection with the provision of the Services or development and delivery of the Deliverables.

2.5 Title to any equipment and supplies which may be provided to the Contractor by UNICEF, will remain with UNICEF. Such equipment and supplies will be returned to UNICEF at the conclusion of the Contract.
or when no longer needed by the Contractor in the same condition as when they were provided to the Contractor, subject to normal wear and tear. The Contractor will pay UNICEF the value of any loss of, damage to, or degradation of, the equipment and supplies beyond normal wear and tear.

Non-conforming Services and Consequences of Delay

2.6 If the Contractor determines it will be unable to provide the Services or deliver the Deliverables by the date stipulated in the Contract, the Contractor will (i) immediately consult with UNICEF to determine the most expeditious means for delivery of the Services and/or Deliverables; and (ii) take necessary action to expedite delivery of the Services and/or Deliverables, at the Contractor’s cost (unless the delay is due to force majeure as defined in Article 6.8 below), if reasonably so requested by UNICEF.

2.7 The Contractor acknowledges that UNICEF may monitor the Contractor’s performance under the Contract and may at any time evaluate the quality of the Services provided and the Deliverables to determine whether or not the Services and Deliverables conform to the Contract. The Contractor agrees to provide its full cooperation with such performance monitoring and evaluation, at no additional cost or expense to UNICEF, and will provide relevant information as reasonably requested by UNICEF, including, but not limited to, the date of receipt of the Contract, detailed status updates, costs to be charged and payments made by UNICEF or pending. Neither the evaluation of the Services and Deliverables, nor failure to undertake any such evaluation, will relieve the Contractor of any of its warranty or other obligations under the Contract.

2.8 If the Services or Deliverables provided by the Contractor do not conform to the requirements of the Contract or are delivered late or incomplete, without prejudice to any of its other rights and remedies, UNICEF can, at its option:

(a) by written notice, require the Contractor, at the Contractor’s expense, to remedy its performance, including any deficiencies in the Deliverables, to UNICEF’s satisfaction within thirty (30) days after receipt of UNICEF’s notice (or within such shorter period as UNICEF may determine, in its sole discretion, is necessary as specified in the notice);
(b) require the Contractor to refund all payments (if any) made by UNICEF in respect of such non-conforming or incomplete performance;
(c) procure all or part of the Services and/or Deliverables from other sources, and require the Contractor to pay UNICEF for any additional cost beyond the balance of the Fee for such Services and Deliverables;
(d) give written notice to terminate the Contract for breach, in accordance with Article 6.1 below, if the Contractor fails to remedy the breach within the cure period specified in Article 6.1 or if the breach is not capable of remedy;
(e) require the Contractor to pay liquidated damages as set out in the Contract.

2.9 Further to Article 11.5 below, the Contractor expressly acknowledges that if UNICEF takes delivery of Services or Deliverables that have been delivered late or otherwise not in full compliance with the requirements of the Contract, this does not constitute a waiver of UNICEF’s rights in respect of such late or non-compliant performance.

Contractor’s Personnel and Sub-Contractors

2.10 The following provisions apply with regard to the Contractor’s Personnel:

(a) The provisions of Article 7 (Ethical Standards) will apply to the Contractor’s Personnel as expressly stated in Article 7.
(b) The Contractor will be responsible for the professional and technical competence of the Personnel it assigns to perform work under the Contract and will select professionally qualified, reliable and competent individuals who will be able to effectively perform the obligations under the Contract.
and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

(c) The qualifications of any Personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract will be substantially the same as, or better than, the qualifications of any personnel originally proposed by the Contractor.

(d) At any time during the term of the Contract, UNICEF can make a written request that the Contractor replace one or more of the assigned Personnel. UNICEF will not be required to give an explanation or justification for this request. Within seven (7) working days of receiving UNICEF’s request for replacement the Contractor must replace the Personnel in question with Personnel acceptable to UNICEF. This provision also extends to Personnel of the Contractor who have “account manager” or “relationship manager” type functions.

(e) If one or more of Contractor’s Key Personnel become unavailable, for any reason, for work under the Contract, the Contractor will (i) notify the UNICEF contracting authority at least fourteen (14) days in advance; and (ii) obtain the UNICEF contracting authority’s approval prior to making any substitution of Key Personnel. In notifying the UNICEF contracting authority, the Contractor will provide an explanation of the circumstances necessitating the proposed replacement(s) and submit justification and qualification of replacement Personnel in sufficient detail to permit evaluation of the impact on the engagement.

(f) The approval of UNICEF of any Personnel assigned by the Contractor (including any replacement Personnel) will not relieve the Contractor of any of its obligations under the Contract. The Contractor’s Personnel, including individual sub-contractors, will not be considered in any respect as being the employees or agents of UNICEF.

(g) All expenses of the withdrawal or replacement of the Contractor’s Personnel will, in all cases, be borne exclusively by the Contractor.

2.11 The Contractor will obtain the prior written approval and clearance of UNICEF for all institutional sub-contractors it proposes to use in connection with the Contract. The approval of UNICEF of a subcontractor will not relieve the Contractor of any of its obligations under the Contract. The terms of any sub-contract will be subject to, and will be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

2.12 The Contractor confirms that it has read UNICEF’s Policy on Conduct Promoting the Protection and Safeguarding of Children. The Contractor will ensure that its Personnel understand the notification requirements expected of them and will establish and maintain appropriate measures to promote compliance with such requirements. The Contractor will further cooperate with UNICEF’s implementation of this policy.

2.13 The Contractor will supervise its Personnel and sub-contractors and will be fully responsible and liable for all Services performed by its Personnel and sub-contractors and for their compliance with the terms and conditions of the Contract.

2.14 The Contractor will comply with all applicable international standards and national labor laws, rules and regulations relating to the employment of national and international staff in connection with the Services, including, but not limited to, laws, rules and regulations associated with the payment of the employer’s portions of income tax, insurance, social security, health insurance, worker’s compensation, retirement funds, severance or other similar payments. Without limiting the provisions of this Article 2 or Article 4 below, the Contractor will be fully responsible and liable for, and UNICEF will not be liable for (a) all payments due to its Personnel and sub-contractors for their services in relation to the performance of the Contract; (b) any action, omission, negligence or misconduct of the Contractor, its Personnel and sub-contractors; (c) any insurance coverage which may be necessary or desirable for the purpose of the Contract; (d) the safety and security of the Contractor’s Personnel and sub-contractors’ personnel; or (e) any costs, expenses, or claims associated with any illness, injury, death or disability of
the Contractor’s Personnel and sub-contractors’ personnel, it being understood that UNICEF will have no liability or responsibility with regard to any of the events referred to in this Article 2.14.

3. FEE; INVOICING; TAX EXEMPTION; PAYMENT TERMS

3.1 The fee for the Services is the amount in the currency specified in the fee section of the Contract (the “Fee”), it being understood that such amount is specified in United States dollars unless otherwise expressly provided for in the fee section of the Contract. Unless expressly stated otherwise in the Contract, the Fee is inclusive of all costs, expenses, charges or fees that the Contractor may incur in connection with the performance of its obligations under the Contract; provided that, without prejudice to or limiting the provisions of Article 3.3 below, all duties and other taxes imposed by any authority or entity must be separately identified. It is understood and agreed that the Contractor will not request any change to the Fee after the Services or Deliverables have been provided and that the Fee cannot be changed except by written agreement between the Parties before the relevant Service or Deliverable is provided. UNICEF will not agree to changes to the Fee for modifications or interpretations of the scope of work if those modifications or interpretations of the scope of work have already been initiated by the Contractor. UNICEF will not be liable to pay for any work conducted or materials provided by the Contractor that are outside the scope of work or were not authorized in advance by UNICEF.

3.2 The Contractor will issue invoices to UNICEF only after the Contractor has provided the Services (or components of the Services) and delivered the Deliverables (or installments of the Deliverables) in accordance with the Contract and to UNICEF’s satisfaction. The Contractor will issue (a) one (1) invoice in respect of the payment being sought, in the currency specified in the Contract and in English, indicating the Contract identification number listed on the front page of the Contract; and (b) provide a clear and specific description of the Services provided and Deliverables delivered, as well as supporting documentation for reimbursable expenses if any, in sufficient detail to permit UNICEF to verify the amounts stated in the invoice.

3.3 The Contractor authorizes UNICEF to deduct from the Contractor’s invoices any amount representing direct taxes (except charges for utilities services) and customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for UNICEF’s official use in accordance with the exemption from tax in Article II, Section 7 of the Convention of the Privileges and Immunities of the United Nations, 1946. In the event any governmental authority refuses to recognize this exemption from taxes, restrictions, duties or charges, the Contractor will immediately consult with UNICEF to determine a mutually acceptable procedure. The Contractor will provide full cooperation to UNICEF with regard to securing UNICEF’s exemption from, or refund of amounts paid as, value-added taxes or taxes of a similar nature.

3.4 UNICEF will notify the Contractor of any dispute or discrepancy in the content or form of any invoice. With respect to disputes regarding only a portion of such invoice, UNICEF will pay the Contractor the amount of the undisputed portion in accordance with Article 3.5 below. UNICEF and the Contractor will consult in good faith to promptly resolve any dispute with respect to any invoice. Upon resolution of such dispute, any amounts that have not been charged in accordance with the Contract will be deducted from the invoice(s) in which they appear and UNICEF will pay any agreed remaining items in the invoice(s) in accordance with Article 3.5 within thirty (30) days after the final resolution of such dispute.

3.5 UNICEF will pay the uncontested amount of the Contractor’s invoice within thirty (30) days of receiving both the invoice and the required supporting documents, as referred to in Article 3.2 above. The amount paid will reflect any discount(s) shown under the payment terms of the Contract. The Contractor will not be entitled to interest on any late payment or any sums payable under the Contract nor any accrued interest on payments withheld by UNICEF in connection with a dispute. Payment will not relieve the Contractor of its obligations under the Contract and will not be deemed to be acceptance by UNICEF of, or waiver of any of UNICEF’s rights with regard to, the Contractor’s performance.
3.6 Each invoice will confirm the Contractor’s bank account details provided to UNICEF as part of the Contractor’s registration process with UNICEF. All payments due to the Contractor under the Contract will be made by electronic funds transfer to that bank account. It is the Contractor’s responsibility to ensure that the bank details supplied by it to UNICEF are up-to-date and accurate and notify UNICEF in writing by an authorized representative of the Contractor of any changes in bank details together with supporting documentation satisfactory to UNICEF.

3.7 The Contractor acknowledges and agrees that UNICEF may withhold payment in respect of any invoice if, in UNICEF’s opinion, the Contractor has not performed in accordance with the terms and conditions of the Contract, or if the Contractor has not provided sufficient documentation in support of the invoice.

3.8 UNICEF will have the right to set off, against any amount or amounts due and payable by UNICEF to the Contractor under the Contract, any payment, indebtedness or other claim (including, without limitation, any overpayment made by UNICEF to the Contractor) owing by the Contractor to UNICEF under the Contract or under any other contract or agreement between the Parties. UNICEF will not be required to give the Contractor prior notice before exercising this right of set-off, explaining the reasons for such set-off, provided, however, that the failure to give such notification will not affect the validity of such set-off.

3.9 Each of the invoices paid by UNICEF may be subject to a post-payment audit by UNICEF’s external and internal auditors or by other authorised agents of UNICEF, at any time during the term of the Contract and for three (3) years after the Contract terminates. UNICEF will be entitled to a refund from the Contractor of amounts such audit or audits determine were not in accordance with the Contract regardless of the reasons for such payments (including but not limited to the actions or inactions of UNICEF staff and other personnel).

4. REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION; INSURANCE

Representations and Warranties

4.1 The Contractor represents and warrants that as of the effective date and throughout the term of the Contract: (a) the Contractor has the full authority and power to enter into the Contract and to perform its obligations under the Contract and the Contract is a legal, valid and binding obligation, enforceable against it in accordance with its terms; (b) all of the information it has previously provided to UNICEF, or that it provides to UNICEF during the term of the Contract and for three (3) years after the Contract terminates. UNICEF will be entitled to a refund from the Contractor of amounts such audit or audits determine were not in accordance with the Contract regardless of the reasons for such payments (including but not limited to the actions or inactions of UNICEF staff and other personnel).
same or similar services for the Contractor’s other clients; and (d) in accordance with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract and the provision of the Services and Deliverables.

4.3 The representations and warranties made by the Contractor in Articles 4.1 and 4.2 above are made to and are for the benefit of (a) each entity (if any) that makes a direct financial contribution to UNICEF to procure the Services and Deliverables; and (b) each Government or other entity (if any) that receives the direct benefit of the Services and Deliverables.

**Indemnification**

4.4 The Contractor will indemnify, hold and save harmless and defend, at its own expense, UNICEF, its officials, employees, consultants and agents, each entity that makes a direct financial contribution to UNICEF to procure the Services and Deliverables and each Government or other entity that receives the direct benefit of the Services and Deliverables, from and against all suits, claims, demands, losses and liability of any nature or kind, including their costs and expenses, by any third party and arising out of the acts or omissions of the Contractor or its Personnel or sub-contractors in the performance of the Contract. This provision will extend to but not be limited to (a) claims and liability in the nature of workers’ compensation, (b) product liability, and (c) any actions or claims pertaining to the alleged infringement of a copyright or other intellectual property rights or licenses, patent, design, trade-name or trade-mark arising in connection with the Deliverables or other liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property provided or licensed to UNICEF under the terms of the Contract or used by the Contractor, its Personnel or sub-contractors in the performance of the Contract.

4.5 UNICEF will report any such suits, proceedings, claims, demands, losses or liability to the Contractor within a reasonable period of time after having received actual notice. The Contractor will have sole control of the defence, settlement and compromise of any such suit, proceeding, claim or demand, except with respect to the assertion or defence of the privileges and immunities of UNICEF or any matter relating to UNICEF’s privileges and immunities (including matters relating to UNICEF’s relations with Host Governments), which as between the Contractor and UNICEF only UNICEF itself (or relevant Governmental entities) will assert and maintain. UNICEF will have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

**Insurance**

4.6 The Contractor will comply with the following insurance requirements:

(a) The Contractor will have and maintain in effect with reputable insurers and in sufficient amounts, insurance against all of the Contractor’s risks under the Contract (including, but not limited to, the risk of claims arising out of or related to the Contractor’s performance of the Contract), including the following:

(i) Insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

(ii) General liability insurance against all risks in respect of the Contract and claims arising out of the Contract in an adequate amount to cover all claims arising from or in connection with the Contractor’s performance under the Contract;

(iii) All appropriate workers’ compensation and employer’s liability insurance, or its equivalent, with respect to its Personnel and sub-contractors to cover claims for death, bodily injury or damage to property arising from the performance of the Contract; and

(iv) Such other insurance as may be agreed upon in writing between UNICEF and the Contractor.
(b) The Contractor will maintain the insurance coverage referred to in Article 4.6(a) above during the term of the Contract and for a period after the Contract terminates extending to the end of any applicable limitations period with regard to claims against which the insurance is obtained.

(c) The Contractor will be responsible to fund all amounts within any policy deductible or retention.

(d) Except with regard to the insurance referred to in paragraph (a)(iii) above, the insurance policies for the Contractor’s insurance required under this Article 4.6 will (i) name UNICEF as an additional insured; (ii) include a waiver by the insurer of any subrogation rights against UNICEF; and (iii) provide that UNICEF will receive thirty (30) days’ written notice from the insurer prior to any cancellation or change of coverage.

(e) The Contractor will, upon request, provide UNICEF with satisfactory evidence of the insurance required under this Article 4.6.

(f) Compliance with the insurance requirements of the Contract will not limit the Contractor’s liability either under the Contract or otherwise.

Liability

4.7 The Contractor will pay UNICEF promptly for all loss, destruction or damage to UNICEF’s property caused by the Contractor’s Personnel or sub-contractors in the performance of the Contract.

5. INTELLECTUAL PROPERTY AND OTHER PROPRIETARY RIGHTS; DATA PROTECTION; CONFIDENTIALITY

Intellectual Property and Other Proprietary Rights

5.1 Unless otherwise expressly provided for in the Contract:

(a) Subject to paragraph (b) of this Article 5.1, UNICEF will 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, documents, data and other materials (“Contract Materials”) that (i) the Contractor develops for UNICEF under the Contract and which bear a direct relation to the Contract or (ii) are produced, prepared or collected in consequence of, or during the course of, the performance of the Contract. The term “Contract Materials” includes, but is not limited to, all maps, drawings, photographs, plans, reports, recommendations, estimates, documents developed or received by, and all other data compiled by or received by, the Contractor under the Contract. The Contractor acknowledges and agrees that Contract Materials constitute works made for hire for UNICEF. Contract Materials will be treated as UNICEF’s Confidential Information and will be delivered only to authorized UNICEF officials on expiry or termination of the Contract.

(b) UNICEF will not be entitled to, and will not claim any ownership interest in, any intellectual property or other proprietary rights of the Contractor that pre-existed the performance by the Contractor of its obligations under the Contract, or that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract. The Contractor grants to UNICEF a perpetual, non-exclusive, royalty-free license to use such intellectual property or other proprietary rights solely for the purposes of and in accordance with the requirements of the Contract.

(c) At UNICEF’s request, the Contractor will take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them (or, in the case, intellectual property referred to in paragraph (b) above, licensing) them to UNICEF in compliance with the requirements of the applicable law and of the Contract.

Confidentiality

5.2 Confidential Information that is considered proprietary by either Party or that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the
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Contract or in connection with the subject matter of the Contract will be held in confidence by the Recipient. The Recipient will use the same care and discretion to avoid disclosure of the Discloser’s Confidential Information as the Recipient uses for its own Confidential Information and will use the Discloser’s Confidential Information solely for the purpose for which it was disclosed to the Recipient. The Recipient will not disclose the Discloser’s Confidential Information to any other party:

(a) except to those of its Affiliates, employees, officials, representatives, agents and sub-contractors who have a need to know such Confidential Information for purposes of performing obligations under the Contract; or

(b) unless the Confidential Information (i) is obtained by the Recipient from a third party without restriction; (ii) is disclosed by the Discloser to a third party without any obligation of confidentiality; (iii) is known by the Recipient prior to disclosure by the Discloser; or (iv) at any time is developed by the Recipient completely independently of any disclosures under the Contract.

5.3 If the Contractor receives a request for disclosure of UNICEF’s Confidential Information pursuant to any judicial or law enforcement process, before any such disclosure is made, the Contractor (a) will give UNICEF sufficient notice of such request in order to allow UNICEF to have a reasonable opportunity to secure the intervention of the relevant national government to establish protective measures or take such other action as may be appropriate and (b) will so advise the relevant authority that requested disclosure. UNICEF may disclose the Contractor’s Confidential Information to the extent required pursuant to resolutions or regulations of its governing bodies.

5.4 The Contractor may not communicate at any time to any other person, Government or authority external to UNICEF, any information known to it by reason of its association with UNICEF that has not been made public, except with the prior written authorization of UNICEF; nor will the Contractor at any time use such information to private advantage.

Data Protection and Security

5.5 The Parties agree that, as between them, all UNICEF Data, together with all rights (including intellectual property and proprietary rights), title and interest to such UNICEF Data, will be the exclusive property of UNICEF, and the Contractor has a limited, nonexclusive license to access and use the UNICEF Data as provided in the Contract solely for the purpose of performing its obligations under the Contract. Except for the foregoing license, the Contractor will have no other rights, whether express or implied, in or to any UNICEF Data or its content.

5.6 The Contractor confirms that it has a data protection policy in place that meets all applicable data protection standards and legal requirements and that it will apply such policy in the collection, storage, use, processing, retention and destruction of UNICEF Data. The Contractor will comply with any guidance or conditions on access and disclosure notified by UNICEF to Contractor in respect of UNICEF Data.

5.7 The Contractor will use its reasonable efforts to ensure the logical segregation of UNICEF Data from other information to the fullest extent possible. The Contractor will use safeguards and controls (such as administrative, technical, physical, procedural and security infrastructures, facilities, tools, technologies, practices and other protective measures) that are necessary and sufficient to meet the Contractor’s confidentiality obligations in this Article 5 as they apply to UNICEF Data. At UNICEF’s request, the Contractor will provide UNICEF with copies of the applicable policies and a description of the safeguards and controls that the Contractor uses to fulfil its obligations under this Article 5.7; provided that any such policies and description provided by the Contractor will be treated as the Contractor’s Confidential Information under the Contract. UNICEF may assess the effectiveness of these safeguards, controls and protective measures and, at UNICEF’s request, the Contractor will provide its full cooperation with any such assessment at no additional cost or expense to UNICEF. The Contractor will not, and will ensure that its Personnel will not, transfer, copy, remove or store UNICEF Data from a
5.8 Except as otherwise expressly stated in the Contract or with UNICEF’s express prior written consent, the Contractor will not install any application or other software on any UNICEF device, network or system. The Contractor represents and warrants to UNICEF that the Services and Deliverables provided under the Contract will not contain any Disabling Code, and that UNICEF will not otherwise receive from the Contractor any Disabling Code in the performance of the Contract. Without prejudice to UNICEF’s other rights and remedies, if a Disabling Code is identified, the Contractor, at its sole cost and expense, will take all steps necessary to: (a) restore and/or reconstruct any and all UNICEF Data lost by UNICEF and/or End Users as a result of Disabling Code; (b) furnish to UNICEF a corrected version of the Services without the presence of Disabling Codes; and (c) as needed, re-implement the Services.

5.9 In the event of any Security Incident, the Contractor will, as soon as possible following the Contractor’s discovery of such Security Incident and at its sole cost and expense: (a) notify UNICEF of such Security Incident and of the Contractor’s proposed remedial actions; (b) implement any and all necessary damage mitigation and remedial actions; and (c) as relevant, restore UNICEF’s and, as directed by UNICEF, End Users’ access to the Services. The Contractor will keep UNICEF reasonably informed of the progress of the Contractor’s implementation of such damage mitigation and remedial actions. The Contractor, at its sole cost and expense, will cooperate fully with UNICEF’s investigation of, remediation of, and/or response to any Security Incident. If the Contractor fails to resolve, to UNICEF’s reasonable satisfaction, any such Security Incident, UNICEF can terminate the Contract with immediate effect.

Service Providers and Sub-Contractors

5.10 The Contractor will impose the same requirements relating to data protection and non-disclosure of Confidential Information, as are imposed upon the Contractor itself by this Article 5 of the Contract, on its service providers, subcontractors and other third parties and will remain responsible for compliance with such requirements by its service providers, subcontractors and other third parties.

End of Contract

5.11 Upon the expiry or earlier termination of the Contract, the Contractor will:

(a) return to UNICEF all of UNICEF’s Confidential Information, including, but not limited to, UNICEF Data, or, at UNICEF’s option, destroy all copies of such information held by the Contractor or its sub-contractors and confirm such destruction to UNICEF in writing; and

(b) will transfer to UNICEF all intellectual and other proprietary information in accordance with Article 5.1(a).

6. TERMINATION; FORCE MAJEURE

Termination by Either Party for Material Breach

6.1 If one Party is in material breach of any of its obligations under the Contract, the other Party can give it written notice that within thirty (30) days of receiving such notice the breach must be remedied (if such breach is capable of remedy). If the breaching Party does not remedy the breach within the thirty (30) days’ period or if the breach is not capable of remedy, the non-breaching Party can terminate the Contract. The termination will be effective thirty (30) days after the non-breaching Party gives the breaching Party written notice of termination. The initiation of conciliation or arbitral proceedings in accordance with Article 9 (Privileges and Immunities; Settlement of Disputes) below will not be grounds for termination of the Contract.

Additional Termination Rights of UNICEF

6.2 In addition to the termination rights under Article 6.1 above, UNICEF can terminate the Contract with immediate effect upon delivery of a written notice of termination, without any liability for termination charges or any other liability of any kind:
(a) in the circumstances described in, and in accordance with, Article 7 (Ethical Standards); or

(b) if the Contractor breaches any of the provisions of Articles 5.2-5.11 (Confidentiality; Data Protection and Security); or

(c) if the Contractor (i) is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent, (ii) is granted a moratorium or a stay, or is declared insolvent, (iii) makes an assignment for the benefit of one or more of its creditors, (iv) has a receiver appointed on account of the insolvency of the Contractor, (v) offers a settlement in lieu of bankruptcy or receivership or (vi) has become, in UNICEF’s reasonable judgment, subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

6.3 In addition to the termination rights under Article 6.1 and Article 6.2 above, UNICEF can terminate the Contract at any time by providing written notice to the Contractor in any case in which UNICEF’s mandate applicable to the performance of the Contract or UNICEF’s funding applicable to the Contract is curtailed or terminated, whether in whole or in part. UNICEF can also terminate the Contract on sixty (60) day’s written notice to the Contractor without having to provide any justification.

6.4 As soon as it receives a notice of termination from UNICEF, the Contractor will take immediate steps to bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum, and will not undertake any further or additional commitments as of and following the date it receives the termination notice. In addition, the Contractor will take any other action that may be necessary, or that UNICEF may direct in writing, in order to minimise losses or protect and preserve any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNICEF has or may be reasonably expected to acquire an interest.

6.5 If the Contract is terminated by either Party, the Contractor will immediately deliver to UNICEF any finished work which has not been delivered and accepted prior to the receipt of a notice of termination, together with any data, materials or work-in-process related specifically to the Contract. If UNICEF obtains the assistance of another party to continue the Services or complete any unfinished work, the Contractor will provide its reasonable cooperation to UNICEF and such party in the orderly migration of Services and transfer of any Contract-related data, materials and work-in-process. The Contractor will at the same time return to UNICEF all of UNICEF’s Confidential Information and will transfer to UNICEF all intellectual and other proprietary information in accordance with Article 5.

6.6 If the Contract is terminated by either Party no payment will be due from UNICEF to the Contractor except for Services and Deliverables provided to UNICEF’s satisfaction in accordance with the Contract, but only if such Services and Deliverables were required or requested before the Contractor’s receipt of the notice of termination or, in the case of termination by the Contractor, the effective date of such termination. The Contractor will have no claim for any further payment beyond payments in accordance with this Article 6.6, but will remain liable to UNICEF for all loss or damages which may be suffered by UNICEF by reason of the Contractor’s default (including but not limited to cost of the purchase and delivery of replacement or substitute Services or Deliverables).

6.7 The termination rights in this Article 6 are in addition to all other rights and remedies of UNICEF under the Contract.

Force Majeure

6.8 If one Party is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations under the Contract, the other Party may terminate the Contract on the same terms and conditions as are provided for in Article 6.1 above, except that the period of notice will be seven (7) days instead of thirty (30) days. “Force majeure” means any unforeseeable and irresistible events arising from causes beyond the control of the Parties, including acts of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism or other acts of a similar nature or force.
“Force majeure” does not include (a) any event which is caused by the negligence or intentional action of a Party; (b) any event which a diligent party could reasonably have been expected to take into account and plan for at the time the Contract was entered into; (c) the insufficiency of funds, inability to make any payment required under the Contract, or any economic conditions, including but not limited to inflation, price escalations, or labour availability; or (d) any event resulting from harsh conditions or logistical challenges for the Contractor (including civil unrest) associated with locations at which UNICEF is operating or is about to operate or is withdrawing from, or any event resulting from UNICEF’s humanitarian, emergency, or similar response operations.

7. ETHICAL STANDARDS

7.1 Without limiting the generality of Article 2 above, the Contractor will be responsible for the professional and technical competence of its Personnel including its employees and will select, for work 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.

7.2 (a) The Contractor represents and warrants that no official of UNICEF or of any United Nations System organisation has received from or on behalf of the Contractor, or will be offered by or on behalf of the Contractor, any direct or indirect benefit in connection with the Contract, including the award of the Contract to the Contractor. Such direct or indirect benefit includes, but is not limited to, any gifts, favours or hospitality.

(b) The Contractor represents and warrants that the following requirements with regard to former UNICEF officials have been complied with and will be complied with:

(i) During the one (1) year period after an official has separated from UNICEF, the Contractor may not make a direct or indirect offer of employment to that former UNICEF official if that former UNICEF official was, during the three years prior to separating from UNICEF, involved in any aspect of a UNICEF procurement process in which the Contractor has participated.

(ii) During the two (2) year period after an official has separated from UNICEF, that former official may not, directly or indirectly on behalf of the Contractor, communicate with UNICEF, or present to UNICEF, about any matters that were within such former official’s responsibilities while at UNICEF.

(c) The Contractor further represents that, in respect of all aspects of the Contract (including the award of the Contract by UNICEF to the Contractor and the selection and awarding of sub-contracts by the Contractor), it has disclosed to UNICEF any situation that may constitute an actual or potential conflict of interest or could reasonably be perceived as a conflict of interest.

7.3 The Contractor further represents and warrants that neither it nor any of its Affiliates, or Personnel or directors, is subject to any sanction or temporary suspension imposed by any United Nations System organisation or other international inter-governmental organisation. The Contractor will immediately disclose to UNICEF if it or any of its Affiliates or Personnel or directors, becomes subject to any such sanction or temporary suspension during the term of the Contract.

7.4 The Contractor will (a) observe the highest standard of ethics; (b) use its best efforts to protect UNICEF against fraud, in the performance of the Contract; and (c) comply with the applicable provisions of UNICEF’s Policy Prohibiting and Combatting Fraud and Corruption. In particular, the Contractor will not engage, and will ensure that its Personnel, agents and sub-contractors do not engage, in any corrupt, fraudulent, coercive, collusive or obstructive conduct as such terms are defined in UNICEF’s Policy Prohibiting and Combatting Fraud and Corruption.

7.5 The Contractor will, during the term of the Contract, comply with (a) all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract and (b) the standards of
conduct required under the UN Supplier Code of Conduct (available at the United Nations Global Marketplace website - www.ungm.org).

7.6 The Contractor further represents and warrants that neither it nor any of its Affiliates is engaged, directly or indirectly, (a) in any practice inconsistent with the rights set out in the Convention on the Rights of the Child, including Article 32, or the International Labour Organisation’s Convention Concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, No. 182 (1999); or (b) in the manufacture, sale, distribution, or use of anti-personnel mines or components utilised in the manufacture of anti-personnel mines.

7.7 The Contractor represents and warrants that it has taken and will take all appropriate measures to prevent sexual exploitation or abuse of anyone by its Personnel including its employees or any persons engaged by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, will constitute the sexual exploitation and abuse of such person. In addition, the Contractor represents and warrants that it has taken and will take all appropriate measures to prohibit its Personnel including its employees or other persons engaged by the Contractor, from exchanging any money, goods, services, or other things of value, for sexual favours or activities or from engaging in any sexual activities that are exploitive or degrading to any person. This provision constitutes an essential term of the Contract and any breach of this representation and warranty will entitle UNICEF to terminate the Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

7.8 The Contractor will inform UNICEF as soon as it becomes aware of any incident or report that is inconsistent with the undertakings and confirmations provided in this Article 7.

7.9 The Contractor acknowledges and agrees that each of the provisions in this Article 7 constitutes an essential term of the Contract.

(a) UNICEF will be entitled, in its sole discretion and at its sole choice, to suspend or terminate the Contract and any other contract between UNICEF and the Contractor with immediate effect upon written notice to the Contractor if: (i) UNICEF becomes aware of any incident or report that is inconsistent with, or the Contractor breaches any of, the undertakings and confirmations provided in this Article 7 or the equivalent provisions of any contract between UNICEF and the Contractor or any of the Contractor’s Affiliates, or (ii) the Contractor or any of its Affiliates, or Personnel or directors becomes subject to any sanction or temporary suspension described in Article 7.3 during the term of the Contract.

(b) In the case of suspension, if the Contractor takes appropriate action to address the relevant incident or breach to UNICEF’s satisfaction within the period stipulated in the notice of suspension, UNICEF may lift the suspension by written notice to the Contractor and the Contract and all other affected contracts will resume in accordance with their terms. If, however, UNICEF is not satisfied that the matters are being adequately addressed by the Contractor, UNICEF may at any time, exercise its right to terminate the Contract and any other contract between UNICEF and the Contractor.

(c) Any suspension or termination under this Article 7 will be without any liability for termination or other charges or any other liability of any kind.

8. FULL COOPERATION WITH AUDITS AND INVESTIGATIONS

8.1 From time to time, UNICEF may conduct inspections, post-payment audits or investigations relating to any aspect of the Contract including but not limited to the award of the Contract, the way in which the Contract operates or operated, and the Parties’ performance of the Contract generally and including but not limited to the Contractor’s compliance with the provisions of Article 7 above. The Contractor will provide its full and timely cooperation with any such inspections, post-payment audits or investigations, including (but not limited to) making its Personnel and any relevant data and
documentation available for the purposes of such inspections, post-payment audits or investigations, at reasonable times and on reasonable conditions, and granting UNICEF and those undertaking such inspections, post-payment audits or investigations access to the Contractor’s premises at reasonable times and on reasonable conditions in connection with making its Personnel and any relevant data and documentation available. The Contractor will require its sub-contractors and its agents, including, but not limited to, the Contractor’s attorneys, accountants or other advisers, to provide reasonable cooperation with any inspections, post-payment audits or investigations carried out by UNICEF.

9. PRIVILEGES AND IMMUNITIES; SETTLEMENT OF DISPUTES

9.1 Nothing in or related to the Contract will be deemed a waiver, express or implied, deliberate or inadvertent, of any of the privileges and immunities of the United Nations, including UNICEF and its subsidiary organs, under the Convention on the Privileges and Immunities of the United Nations, 1946, or otherwise.

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

9.3 The Parties will use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to the Contract. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation will take place in accordance with the UNCITRAL Conciliation Rules then in force, or according to such other procedure as may be agreed between the Parties. Any dispute, controversy or claim between the Parties arising out of the Contract which is not resolved within ninety (90) days after one Party receives a request from the other Party for amicable settlement can be referred by either Party to arbitration. The arbitration will take place in accordance with the UNCITRAL Arbitration Rules then in force. The venue of the arbitration will be New York, NY, USA. The decisions of the arbitral tribunal will be based on general principles of international commercial law. The arbitral tribunal will have no authority to award punitive damages. In addition, the arbitral tribunal will have no authority to award interest in excess of the London Inter-Bank Offered Rate (LIBOR) then prevailing and any such interest will be simple interest only. The Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such controversy, claim or dispute.

10. NOTICES

10.1 Any notice, request or consent required or permitted to be given or made pursuant to the Contract will be in writing, and addressed to the persons listed in the Contract for the delivery of notices, requests or consents. Notices, requests or consents will be delivered in person, by registered mail, or by confirmed email transmission. Notices, requests or consents will be deemed received upon delivery (if delivered in person), upon signature of receipt (if delivered by registered mail) or twenty-four (24) hours after confirmation of receipt is sent from the addressee’s email address (if delivered by confirmed email transmission).

10.2 Any notice, document or receipt issued in connection with the Contract must be consistent with the terms and conditions of the Contract and, in case of any ambiguity, discrepancy or inconsistency, the terms and conditions of the Contract will prevail.

10.3 All documents that comprise the Contract, and all documents, notices and receipts issued or provided pursuant to or in connection with the Contract, will be deemed to include, and will be interpreted and applied consistently with, the provisions of Article 9 (Privileges and Immunities; Settlement of Disputes).

11. OTHER PROVISIONS

11.1 The Contractor acknowledges UNICEF’s commitment to transparency as outlined in UNICEF’s Information Disclosure Policy and confirms that it consents to UNICEF’s public disclosure of the terms of the Contract should UNICEF so determine and by whatever means UNICEF determines.
11.2 The failure of one Party to object to or take affirmative action with respect to any conduct of the other Party which is in violation of the terms of the Contract will not constitute and will not be construed to be a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

11.3 The Contractor will be considered as having the legal status of an independent contractor as regards UNICEF. Nothing contained in the Contract will be construed as making the Parties principal and agent or joint venturers.

11.4 The Contractor will not, without the prior written consent of UNICEF, assign, transfer, pledge or make other disposition of the Contract, or of any part of the Contract, or of any of the Contractor's rights or obligations under the Contract.

11.5 No grant of time to the Contractor to cure a default under the Contract, nor any delay or failure by UNICEF to exercise any other right or remedy available to UNICEF under the Contract, will be deemed to prejudice any rights or remedies available to UNICEF under the Contract or constitute a waiver of any rights or remedies available to UNICEF under the Contract.

11.6 The Contractor will not seek or file any lien, attachment or other encumbrance against any monies due or to become due under the Contract, and will not permit any other person to do so. It will immediately remove or obtain the removal of any lien, attachment or other encumbrance that is secured against any monies due or to become due under the Contract.

11.7 The Contractor will not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNICEF or the United Nations. Except as regards references to the name of UNICEF for the purposes of annual reports or communication between the Parties and between the Contractor and its Personnel and sub-contractors, the Contractor will not, in any manner whatsoever use the name, emblem or official seal of UNICEF or the United Nations, or any abbreviation of the name of the United Nations, in connection with its business or otherwise without the prior written permission of UNICEF.

11.8 The Contract may be translated into languages other than English. The translated version of the Contract is for convenience only, and the English language version will govern in all circumstances.

11.9 No modification or change in the Contract, and no waiver of any of its provisions, nor any additional contractual relationship of any kind with the Contractor will be valid and enforceable against UNICEF unless set out in a written amendment to the Contract signed by an authorised official of UNICEF.

11.10 The provisions of Articles 2.14, 3.8, 3.9, 4, 5, 7, 8, 9, 11.1, 11.2 and 11.7 will survive provision of the Services and delivery of the Deliverables and the expiry or earlier termination of the Contract.