



## UNFPA GENERAL TERMS AND CONDITIONS FOR IMPLEMENTING PARTNER AGREEMENTS

### 1. Definitions

“HACT” means the Harmonized Approach to Cash Transfer Framework (February 2014) of the United Nations Development Group (“UNDG”), available at <https://unsdg.un.org/resources/harmonized-approach-cash-transfers-framework> or at such other URL as UNDG may from time to time decide.

“Partner Platform” means UNFPA’s electronic Workplan management system, including for the preparation and submission of FACE Forms, direct payment requests and programmatic reporting, which is available at : <https://unip.unfpa.org/> or at such other URL as UNFPA may from time to time decide.

“FACE Form” means the UNDG’s standard Funding Authorization and Certificate of Expenditure Form, a copy of which is available at [http://www.unfpa.org/sites/default/files/admin-resource/PROG\\_FACE\\_Form.xls](http://www.unfpa.org/sites/default/files/admin-resource/PROG_FACE_Form.xls) or at such other URL as UNFPA may from time to time decide.

“WP Progress Report Form” means UNFPA’s standard form of Workplan progress report, available at <https://drive.google.com/file/d/0BzrC9ALCRcCvY0c1dFdIRkFqSDg/edit?usp=sharing> or at such other URL as may be decided from time to time by UNFPA.

“UNFPA Direct Payment Request Form” means the form available at <https://drive.google.com/open?id=0BzrC9ALCRcCvOHdJNnZJUDJIbDQ> or at such other URL as UNFPA may from time to time decide.

“Support Costs” means those costs incurred by the IP which cannot be unequivocally attributed to a specific activity implemented by the IP in accordance with this Agreement, including any WP. The “Support Cost Rate” represents the mutually agreed amount reimbursed by UNFPA towards the IP’s regular operating expenses as provided in this Agreement and the WPs and considered by both Parties to be fair, and shall be estimated as a percentage of the direct costs actually incurred by the IP in the implementation of activities in accordance with this Agreement and the WPs. In accordance with UNFPA’s financial rules, an IP that is a Government entity shall not be entitled to the payment or reimbursement of any Support Costs.

“Non-expendable Equipment” means equipment provided by UNFPA to the IP under this Agreement that cost US\$ 1,000 or more per unit, including costs of initial delivery and handling, and has a service lifetime with the IP of at least three years.

“Programme Supplies” means supplies provided by UNFPA to the IP under this Agreement, including reproductive health (“RH”) supplies (RH-related pharmaceuticals, such as contraceptive pharmaceuticals, and medical devices, such as male and female condoms), other medical equipment and supplies, emergency health and medical kits (which may include RH

supplies as part of the kits), dignity and hygiene kits, other well-being items, supplies for humanitarian response activities, and census materials.

“Programme Supplies Report Form” means UNFPA’s standard form of Programme Supplies Report, available at [https://drive.google.com/open?id=1bOCZArGH9Z\\_P-uRrmF-k7JFgV3o\\_ogR5](https://drive.google.com/open?id=1bOCZArGH9Z_P-uRrmF-k7JFgV3o_ogR5).

“Letter of Representation” means the form available at <https://docs.google.com/a/unfpa.org/file/d/0BzrC9ALCReCvRXc5Ukd5cDFUS1U/edit> or at such other URL as UNFPA may from time to time decide.

## **2. General Responsibilities of the Parties**

2.1 The Parties agree to carry out their respective responsibilities in accordance with the provisions of this Agreement, including the WPs concluded hereunder.

2.2 The Parties shall keep each other informed of all relevant activities pertaining to the implementation of the WPs, and shall hold consultations as appropriate, including with regard to any circumstance that may affect the achievement of the objectives of the Programme and the WPs.

2.3 The Parties shall refrain from any action that may adversely affect the interests of the other Party and shall fulfill their commitments with the fullest regard for the terms and conditions of this Agreement and the principles of the United Nations.

## **3. Responsibilities of the IP**

3.1 The IP will contribute to the implementation of the WPs by undertaking the responsibilities allocated to it in this Agreement, in full cooperation with UNFPA, and in accordance with the budget, schedule, and other details set out in the WPs, including by:

3.1.1 Promptly commencing work on the responsibilities allocated to it in the WP (but in no case prior to signing this Agreement) and solely within the amounts authorized for spending in writing by UNFPA;

3.1.2 Making its designated contributions of technical assistance, services, supplies and equipment towards the implementation of the WPs as provided for under this Agreement, including the WPs;

3.1.3 Completing its responsibilities with diligence and efficiency, and in conformity with the requirements set out in the WPs (including in connection with the schedule and budget);

3.1.4 Providing the reports required under this Agreement in a timely manner and satisfactory to UNFPA, and furnishing all other information covering the WPs, spending authorizations, and the use of any cash, supplies and equipment transferred to it by UNFPA that UNFPA may reasonably ask for;

3.1.5 Exercising the highest standard of care when handling and administering the cash, supplies and equipment provided to it by UNFPA, and ensuring that its personnel

will conduct itself with the highest standards of integrity and care in the administration of public assets including money;

3.1.6 Undertaking best efforts to address any findings and implement any recommendations resulting from assessments, spot checks and audits of the IP performed under this Agreement;

3.1.7 Maintaining and applying adequate internal controls necessary for the completion of activities, including adequate segregation of duties;

3.1.8 Maintaining and enforcing an adequate anti-fraud and anti-corruption framework.

#### **4. Responsibilities of UNFPA**

4.1 UNFPA will contribute to the implementation of the WPs by undertaking the responsibilities allocated to it in this Agreement, including by:

4.1.1 Commencing and completing the responsibilities allocated to it in the WPs in a timely manner, provided that all necessary reports and other documents are available;

4.1.2 Making transfers of any cash, supplies and equipment in the manner as described in this Agreement;

4.1.3 Undertaking and completing monitoring, evaluation and oversight of the WPs;

4.1.4 Liaising on an ongoing basis, as needed, with the Government (as applicable), other members of the United Nations Country Team, donors, and other stakeholders; and

4.1.5 Providing overall guidance, oversight, technical assistance and leadership, as appropriate, for the implementation of the WPs, and making itself available for consultations as reasonably requested.

#### **5. Cash Transfer by UNFPA to/ on behalf of IP**

5.1 UNFPA will provide the IP with financial assistance for the IP's activities as stipulated in the WPs (the "Cash Transfer"), subject to the availability of funds and the terms of this Agreement. UNFPA's assistance to the IP will not exceed the amounts included in the WPs. UNFPA will provide such financial assistance to the IP following three modalities of Cash Transfer (the "Cash Transfer Modalities" and each a "Cash Transfer Modality"):

5.1.1 Advance payment by UNFPA to IP (referred to in the HACT and in this Agreement as "Direct Cash Transfer");

5.1.2 Reimbursement by UNFPA to IP (referred to in the HACT and in this Agreement as "Reimbursement"); and

5.1.3 Payment by UNFPA on IP's behalf to IP's vendor or supplier (referred to in HACT and in this Agreement as "Direct Payment").

5.2 The Cash Transfer shall be done in installments as identified in the WPs or as otherwise decided by UNFPA (the "Cash Transfer Installments" and each one of them separately a "Cash

Transfer Installment”). Each Cash Transfer Installment will be done following such Cash Transfer Modality as decided solely by UNFPA.

5.3 Cash Transfer Installments will be transferred to or, where the Direct Payment modality is used, on behalf of the IP solely for the purpose of contributing to the implementation of the WPs. The IP agrees that the funds so transferred will be used exclusively for the implementation of the WPs.

#### 5.4 Specific Cash Transfer procedures for each Cash Transfer Modality

5.4.1 The IP may submit requests for Cash Transfer Installments, and UNFPA will transfer each Cash Transfer Installment to or, where the Direct Payment modality is used, on behalf of the IP, in accordance with the procedures set out below.

##### 5.4.2 Procedure for requests for Direct Cash Transfer

- (a) Funding authorization request for Direct Cash Transfer. Every three calendar months during the term of this Agreement (“Quarter Year Period” or “Quarter”) the IP may submit to UNFPA a written funding authorization request for a Direct Cash Transfer Installment. The request shall be submitted using the Partner Platform subject to such instructions as issued by UNFPA and may not exceed the relevant amount specified in the WP. (However, in the event UNFPA agrees in writing that the use of Partner Platform is not possible, the IP will prepare a paper copy of the FACE Form using a FACE form and format as decided by UNFPA, ensure that it is duly signed by an Authorized Officer, and submit it in paper form to UNFPA.)
- (b) First funding authorization request and first Direct Cash Transfer Installment. The first written request, using the FACE Form, may be made after this Agreement and the WP have been signed by both Parties. If such written request is in proper form and complete, UNFPA will determine the amount to be transferred and will transfer that amount to the IP within reasonable time. The IP will submit financial and progress reporting with regard to the Direct Cash Transfer Installment as provided in clause 10 entitled “Financial Reporting”.
- (c) Subsequent funding authorization requests and subsequent Direct Cash Transfer Installments. Any subsequent funding authorization request for Direct Cash Transfer may not be submitted before the IP has submitted financial and progress reporting on previous Cash Transfer Installments (see clause 10 entitled “Financial Reporting” and clause 12 entitled “Progress Reporting”) and before any other information as may be requested by UNFPA at its discretion has been provided. Any subsequent request for Direct Cash Transfer may not exceed the relevant amounts specified in the WP. If such subsequent request for Direct Cash Transfer is received in a timely fashion and is in proper form and complete, UNFPA will determine the amount to be transferred and will transfer that amount to the IP within reasonable time.

##### 5.4.3 Procedure for requests for Reimbursement

- (a) Funding authorization request for expenditures subject to Reimbursement. Any expenditure by the IP from its own resources in respect of which the IP intends to

request a Reimbursement under this Agreement, shall be subject to funding authorization by UNFPA. To obtain funding authorization of IP's expenditures that will be subject to Reimbursement, the IP shall submit to UNFPA a funding authorization request for Reimbursement in a form and format as decided by UNFPA. This funding authorization request may not exceed the relevant amount specified in the WP and shall be duly signed by an Authorized Officer. If the funding authorization request for Reimbursement is in proper form and complete, UNFPA will determine the amount to be authorized for funding and will authorize that amount by written reply to the IP.

- (b) Requests for Reimbursement. Every Quarter the IP may submit to UNFPA a written request for a Reimbursement. Such request for Reimbursement shall be submitted using the Partner Platform subject to such instructions as issued by UNFPA. (However, in the event UNFPA agrees in writing that the use of the Partner Platform is not possible, the IP will prepare a paper copy of the FACE Form using a FACE form and format as decided by UNFPA, ensure that it is duly signed by an Authorized Officer, and submit it in paper form to UNFPA.) The request for Reimbursement shall be submitted in connection with proper financial reporting on the expenditure sought for Reimbursement as well as proper progress reporting (see clause 10 entitled "Financial Reporting" and clause 12 entitled "Progress Reporting"). The request may not exceed the amount authorized for funding by UNFPA. The request may not be submitted before the IP has submitted financial and progress reporting on previous Cash Transfer Installments (see clause 10 entitled "Financial Reporting" and clause 12 entitled "Progress Reporting") and before any other information as may be requested by UNFPA at its discretion has been provided. If such written request for Reimbursement is in proper form and complete, UNFPA will determine the amount to be reimbursed and will transfer that amount to the IP within reasonable time.

#### 5.4.4 Procedure for requests for Direct Payment:

- (a) Request for Direct Payment. The IP may submit to UNFPA a written request for Direct Payment to the IP's vendor. Such request shall be submitted using the Partner Platform subject to such instructions as issued by UNFPA. (However, in the event UNFPA agrees in writing that the use of the Partner Platform is not possible, the IP will submit the request for Direct Payment using the UNFPA Direct Payment Request Form, which shall be signed by an Authorized Officer.) The request for Direct Payment is due no later than the Quarter Year Period following receipt of the goods or services. The request may not exceed the relevant amount specified in the WP. The request may not be submitted before the IP has submitted financial and progress reporting on previous Cash Transfer Installments (see clause 10 on "Financial Reporting" and clause 12 on "Progress Reporting") and before any other information as may be requested by UNFPA at its discretion has been provided. If such written request for Direct Payment is in proper form and complete, UNFPA will determine the amount to be directly paid to the IP's vendor and will transfer that amount to the vendor within reasonable time.
- (b) Vendor information requirements. The request for Direct Payment shall in all cases include the vendor's banking information and copies of the original invoice

or invoices issued by the vendor to the IP. The IP will upload such copies in the Partner Platform. (However, in the event UNFPA has agreed in writing that the use of “Partner Platform” is not possible, the IP will submit such copies together with the UNFPA Direct Payment Request Form.) The IP understands that it must retain original invoices as provided in clause 8 (“Record Keeping”).

## 5.5 Terms and conditions applicable to all Cash Transfer Modalities

5.5.1 Any request for a Cash Transfer Installment by the IP shall fulfill the following criteria to the satisfaction of UNFPA, failing which UNFPA may decide not to honor the request in whole or in part:

- (a) The amount and purpose of the request shall be consistent with the provisions of the WP, including its schedule and budget;
- (b) The request shall be reasonable, adequately supported by itemized cost breakdowns, and justified under principles of sound financial management, in particular the principles of value for money and cost-effectiveness;
- (c) There shall be no other grounds for believing the expenditure is in contravention of this Agreement, including the WP; and
- (d) Prior Cash Transfer Installments shall have been reported on to UNFPA’s satisfaction in accordance with clause 10 entitled “Financial Reporting” and clause 12 entitled “Progress Reporting”.

5.5.2 UNFPA may decide to adjust the amount of any Cash Transfer Installment where it has reason to do so, including to:

- (a) Take into consideration the general progress made to date under the WPs;
- (b) Offset any unspent or unreported balance remaining with the IP from any previous Cash Transfer Installment or any amounts paid by UNFPA, lost by IP or used by IP other than in accordance with the terms and conditions of this Agreement, including any amounts shown by audits, spot checks or investigations to have been so paid, lost or used; and
- (c) Account for interest earned by the IP from a previous Cash Transfer Installment.

5.5.3 UNFPA will only be required to transfer to or, where the Direct Payment modality is used, on behalf of the IP, the amount UNFPA determines is due under the terms of this Agreement. The IP agrees that UNFPA will not be liable to the IP or any third party, including the IP’s vendor or supplier, for any amounts that UNFPA determines are not owing under this Agreement.

5.5.4 The administration by the IP of the Cash Transfer shall be carried out under its own financial regulations, rules and procedures to the extent they are found appropriate by UNFPA through Assessments or otherwise. Where UNFPA determines that the IP’s financial regulations, rules and procedures are not appropriate, UNFPA shall give written notice to the IP and in such case UNFPA may decide, *inter alia*, to implement the WP or

any parts thereof (including any procurement activities) directly or transfer the implementation thereof to another implementing partner.

5.5.5 Where the IP buys goods or services from the Cash Transfer, the IP shall conduct those procurement activities in accordance with the following principles: (i) Best value for money; (ii) Fairness, integrity and transparency; and (iii) Competition.

## **6. Transfer of Programme Supplies and Non-expendable Equipment by UNFPA to IP**

6.1 Programme Supplies and Non-expendable Equipment transferred to the IP shall be used exclusively for the implementation of the WPs, unless UNFPA agrees otherwise in writing in any particular case.

6.2 The IP will be deemed to become the owner of the Programme Supplies and Non-expendable Equipment as of the moment when control over them is transferred to the IP. Control is considered as transferred upon occurrence of the first of the following events:

6.2.1 Physical transfer by UNFPA and receipt by the IP of the Programme Supplies and Non-expendable Equipment. Physical transfer and receipt of the Programme Supplies and Non-expendable Equipment will be documented in accordance with such standard form and format as decided by UNFPA;

6.2.2 Delivery of the Programme Supplies and Non-expendable Equipment in accordance with the Incoterm or similar trade term agreed between UNFPA and the manufacturer, supplier, carrier, freight forwarder or other third party, provided the IP is the named consignee; or

6.2.3 Earmarking of the Programme Supplies and Non-expendable Equipment for the IP. “Earmarking” means an exceptional arrangement between UNFPA and the IP subject to which Programme Supplies or Non-expendable Equipment are temporarily held by UNFPA, but UNFPA and the IP have agreed that control over the Programme Supplies and/or Non-expendable Equipment has transferred from UNFPA to the IP. Earmarking of Programme Supplies and Non-expendable Equipment will be documented in accordance with such standard form and format as decided by UNFPA. The Parties acknowledge that UNFPA temporarily holds the Programme Supplies or Non-expendable Equipment at the request and for the convenience of the IP and that under no circumstances UNFPA shall be liable to the IP or any third party for any loss or damage arising from or in connection with, or for any loss, destruction or deterioration of, any Programme Supplies and Non-expendable Equipment, as a result of any Earmarking arrangement.

6.3 The IP shall designate an agent authorized to receive and execute relevant documents for the receipt of Programme Supplies and Non-expendable Equipment. Upon request by UNFPA the IP shall inform UNFPA in writing of the contact details of such agent.

6.4 The Parties recognize that this is an agreement for the implementation of programme activities and not a contract of sale. However, for clarity, the Parties understand and agree that the Programme Supplies and Non-expendable Equipment are provided “as is” and UNFPA disclaims any and all warranties, express or implied.

6.5 UNFPA retains the right to direct that Programme Supplies and Non-expendable Equipment shall be reassigned towards the implementation of another WP, which may be

implemented by the IP or by another implementing partner of UNFPA. In the latter case, the IP shall, upon written instructions by UNFPA, transfer ownership of any Programme Supplies and Non-expendable Equipment to the implementing partner receiving them.

6.6 UNFPA may decide in writing that UNFPA shall remain the owner of Programme Supplies and Non-expendable Equipment. The IP shall exercise the highest standard of care when using and administering such Programme Supplies and Non-expendable Equipment, and the IP shall place UNFPA markings thereon in consultation with UNFPA.

6.7 At UNFPA's sole discretion, Programme Supplies and Non-expendable Equipment may be consigned to UNFPA in the country, or UNFPA may name the IP as consignee in UNFPA's contract with the manufacturer, supplier, carrier, freight forwarder or other third party. Where the IP is the named consignee, UNFPA will provide to the IP the transport documents ordinarily required for the IP to accept or retrieve the goods, and the IP shall be responsible for:

6.7.1 Completing all customs formalities and for obtaining all customs and related clearances (unless otherwise provided in the applicable Incoterm). Article II, Section 7 of the Convention on the Privileges and Immunities of the United Nations ("General Convention") provides, *inter alia*, that the United Nations, including its subsidiary organs, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties, and charges of a similar nature in respect of articles imported or exported for its official use. Accordingly, the IP acknowledges that the Programme Supplies and Non-expendable Equipment are exempt, *inter alia*, from customs duties and prohibitions and restrictions on their import, under the terms of the General Convention as well as the provisions of the basic agreement concluded between the Government and UNFPA, as applicable. In the event any governmental authority refuses to recognize the exemptions of UNFPA from such taxes, restrictions, duties or charges, the IP shall immediately consult with UNFPA to determine a mutually acceptable procedure;

6.7.2 Accepting and retrieving the Programme Supplies and Non-expendable Equipment without delay. The IP shall be responsible to cover and pay for all costs associated with acceptance and retrieval of the Programme Supplies and Non-Expendable Equipment. Where the IP causes additional costs as a result of any delay in accepting or retrieving the Programme Supplies and Non-expendable Equipment, including additional costs for warehousing, overtime, additional logistics or security charges, demurrage and detention (including container demurrage and detention), the IP shall also be liable for such costs, and the IP herewith agrees to pay or reimburse such costs directly to the carrier, freight forwarder, warehouse operator, port authority, service provider or other party. Under no circumstances shall any costs associated with the acceptance and retrieval of the Programme Supplies and Non-Expendable Equipment be charged to UNFPA through FACE Forms or otherwise.

6.8 As applicable, upon arrival in the country the Programme Supplies will have a remaining shelf life of not less than the minimum period established by the World Health Organization ("WHO"), unless otherwise decided by UNFPA in any particular case.

6.9 If national regulations require mandatory, in-country post-shipment or confirmatory testing ("Post-shipment Testing") for the specific Programme Supplies, the IP may conduct such Post-shipment Testing or cause Post-shipment Testing to be conducted. If national regulations do not require mandatory Post-shipment Testing, it is agreed that no such Post-shipment Testing shall



be conducted. It is understood that the foregoing is without prejudice to Post-shipment Testing being ordered by a national regulatory authority where the authority has a well-founded concern that the Programme Supplies have deteriorated during transportation. The laboratory conducting such testing should be ISO 17025-accredited or WHO pre-qualified for testing of the Programme Supplies in question.

6.10 In cases in which Post-shipment Testing is being conducted, the IP agrees to consult closely with UNFPA during and with regard to all aspects thereof. The IP agrees to provide to UNFPA a full copy of any Post-shipment Testing laboratory report.

6.11 The IP shall ensure that any Programme Supplies consigned or transferred to it will be stored, including during transportation by the IP or its agents in the country, in accordance with all manufacturer's or supplier's instructions, and in a manner suitable to maintain the quality and efficacy of the Programme Supplies as applicable.

6.12 The IP shall ensure effective warehouse management, warehouse security, and inventory tracking and control, for all Programme Supplies and Non-expendable Equipment.

6.13 The IP shall ensure that the Programme Supplies and Non-expendable Equipment will be used exclusively in a manner and for the purposes authorized in, and for the implementation of, the WPs or applicable supplementary agreements (*e.g.* a distribution plan agreed by both Parties). The IP shall distribute and deliver the Programme Supplies in a timely fashion, in accordance with any time tables, time limits and other requirements and at locations as included either in the WP or in a supplementary agreement, and in a manner suitable to maintain the quality and efficacy of the Programme Supplies as applicable.

6.14 The Programme Supplies and Non-expendable Equipment may not be sold for profit or otherwise. In particular, the Programme Supplies may not be diverted from the implementation of the WP, such as offered for sale or re-sale by the IP or third parties in the stream of commerce. Any sale by the IP or its agents or subcontractors of the Programme Supplies for purposes of *social marketing* will require prior written authorization by UNFPA to be provided by an amendment to the IP Agreement.

6.15 Following the receipt of the Programme Supplies and Non-expendable Equipment, the IP shall be responsible to cover and pay for all costs associated with the subsequent in-country transportation, regardless of mode of transport, and related logistics, unless otherwise agreed between the IP and UNFPA in writing.

6.16 The IP shall ensure that the Programme Supplies will be distributed and delivered together with all relevant information, including shelf life information and applicable patient, consumer or user instructions.

6.17 Any primary and secondary packaging of Programme Supplies shall not be subject to any modification or alteration. In particular, the IP shall not re-name, re-brand, apply marks on, or otherwise change the appearance of, the packaging without the prior written approval of UNFPA. Such approval shall be requested in writing by the IP from the Chief, Procurement Services Branch, UNFPA, who may be contacted at Marmorvej 51, 2100 Copenhagen, Denmark; or at [procurement@unfpa.org](mailto:procurement@unfpa.org).

6.18 Where, exceptionally, disposal of Programme Supplies has been ordered by a governmental authority, including a national regulatory authority, the IP shall immediately consult with UNFPA to determine a mutually acceptable procedure.

## **7. Support Costs**

If the IP is a Government entity (including any government subdivision or entity at the national or local level) the IP shall not be entitled to the reimbursement by UNFPA of any Support Costs. If the IP is not a Government entity, Support Costs shall be reimbursable by UNFPA to the IP at a Support Cost Rate as agreed between the Parties in the WP. The IP shall record the Support Costs in the FACE Forms to be submitted to UNFPA in accordance with the terms of this Agreement. The IP acknowledges that its requests for reimbursement of Support Costs included in the FACE Forms shall constitute a part of the scope of audit to be conducted in accordance with the relevant provisions of this Agreement.

## **8. Record Keeping**

8.1 The IP agrees to maintain books and records that are accurate, complete and up-to-date.

8.2 The IP will retain all records of and relating to any Cash Transfer and the use of the Cash Transfer by the IP. The IP's books and records will clearly identify all Cash Transfer Installments received by the IP, disbursements made by the IP under this Agreement, and the amount of any unspent funds.

8.3 The IP will further retain all records of and relating to Programme Supplies and Non-expendable Equipment either purchased from the Cash Transfer or transferred to the IP under the terms of this Agreement.

8.4 Without limiting the generality of clauses 8.1 to 8.3 above, the IP will:

8.4.1 Retain all records relating to receipt, storage, distribution, loss, theft, destruction and/or expiry of Programme Supplies and Non-expendable Equipment, including quantities and values of the goods concerned;

8.4.2 Maintain records showing which transactions recorded in its accounting system represent the expenditures reported for each line on the FACE Forms;

8.4.3 Retain original documentation concerning the implementation of activities by the IP under this Agreement, including contracts, purchase orders, leases, bills, invoices, receipts, transport and delivery documents, customs documentation, warranty documentation, payment vouchers, bank statements, airline tickets, gasoline coupons, employment contracts, payroll records, attendance lists, expenses claims, petty cash receipts, journal vouchers, invitations to bid, requests for proposals and quotations, bids, quotes and proposals, bid opening and analysis reports, contract award documents, receipt and distribution notes for Programme Supplies and Non-expendable Equipment, and any other relevant documentation.

8.5 The IP understands that a written statement by the IP that money has been spent or Programme Supplies distributed is insufficient and cannot replace the original documentation to support expenditures and distributions.

8.6 All records referred to in this clause 8 shall be kept and retained by the IP for a period of seven years after the completion of the last WP or the termination of this Agreement, whichever happens later.

## 9. **Ineligible Expenditures**

9.1 The following expenditures are ineligible for Cash Transfer (“Ineligible Expenditures”):

9.1.1 Expenditures not made for activities, or not necessary for the implementation of the activities, included in the WP;

9.1.2 Expenditures for direct taxes, except charges for public utility services, or customs duties and charges of a similar nature, unless the IP has consulted with UNFPA to determine a mutually acceptable procedure and UNFPA has authorized the expenditure;

9.1.3 Expenditures for value added tax (“VAT”) unless the IP can demonstrate to the satisfaction of UNFPA that it is unable to recover the VAT;

9.1.4 Expenditures covered by or relating to another WP;

9.1.5 Expenditures paid or reimbursed to the IP by another donor or entity;

9.1.6 Expenditures in relation to which the IP has received an in-kind contribution from another donor or entity;

9.1.7 Support Costs, if any, exceeding the support cost rate referred to in clause 7;

9.1.8 Expenditures other than Support Costs, if any, that are not verifiable by records as provided in clause 8 of this Agreement;

9.1.9 If the IP is a Government entity (including any government subdivision or entity at the national or local level), salaries for IP’s employees or personnel exceeding the established salary or pay scale rates of the IP but in no case exceeding the rates payable by UNFPA for comparable functions performed by locally recruited staff members at the relevant duty station. If the IP is not a Government entity, salaries for IP’s employees or personnel exceeding the rates payable by UNFPA for comparable functions performed by locally recruited staff members at the relevant duty station;

9.1.10 Expenditures in respect of fees for individual consultants retained by the IP exceeding the rates payable by UNFPA for comparable services rendered by individual consultants;

9.1.11 Expenditures for travel, daily subsistence and related allowances for the IP’s employees, personnel or consultants exceeding the rates payable by UNFPA to, or for standards of accommodation for travel exceeding the standards permissible in UNFPA for, its staff members or consultants, as applicable;

9.1.12 Expenditures for the IP’s activities if the implementation of the activity has not been concluded. (The IP’s use of cash-based accounting, as the case may be, notwithstanding, the IP recognizes that UNFPA uses accrual-based accounting and,

therefore, the expenditures for the IP's activities constitute Ineligible Expenditures and may not be reported on the FACE Form prior to the conclusion of the implementation of the activity. However, expenditures by the IP to its vendors or subcontractors are eligible for Cash Transfer and may be reported on the FACE Form if the underlying contract specifies a payment and delivery schedule that supports the expenditure);

9.1.13 Expenditures that merely represent financial transfers between administrative units or locations of the IP;

9.1.14 Expenditures that are not reasonable and justified under principles of sound financial management, in particular the principles of value for money and cost-effectiveness;

9.1.15 Expenditures that relate to obligations that were entered into after the end date of the relevant WP;

9.1.16 Expenditures for Programme Supplies and Non-expendable Equipment that have been lost, stolen, destroyed, wasted, or otherwise rendered useless or unusable, while under the custody or control of the IP or the IP's employees, personnel, agents or sub-contractors;

9.1.17 Debt and debt service charges;

9.1.18 Expenditures made in contravention of any of the terms of this Agreement.

## 10. **Financial Reporting**

10.1 If the IP received Cash Transfer, the IP will submit, unless otherwise agreed between the Parties in writing, financial reports no later than 15 calendar days after the end of every Quarter. The reports shall be submitted using the Partner Platform subject to such instructions as issued by UNFPA. (However, in the event UNFPA agrees in writing that the use of the Partner Platform is not possible, the IP will prepare a paper copy of the FACE Form using a FACE form and format as decided by UNFPA, ensure that it is duly signed by an Authorized Officer, and submit it in paper form to UNFPA.) The FACE Form:

10.1.1 Shall only include expenditures that are identifiable and verifiable. (The term "identifiable" includes that the expenditures are recorded in the IP's accounting system and that the accounting system shows which transactions represent the expenditures reported for each line on the FACE Form. The term "verifiable" includes that the expenditures may be confirmed by the records in clause 8.)

10.1.2 Shall only include those expenditures that are directly attributable to the implementation of the activities included in the WP;

10.1.3 Shall only include expenditures that have actually been incurred and borne by the IP;

10.1.4 Shall not include any Ineligible Expenditures;

10.1.5 Shall include the balance of any unspent funds remaining from any previous Cash Transfer Installments;

10.1.6 Shall include any refunds or adjustments received by the IP against any previous Cash Transfer Installments;

10.1.7 Shall include interest earned on any unspent balance remaining from any previous Cash Transfer Installments.

10.2 UNFPA shall have access, upon request, to all documents and records that support or may be deemed to support the information contained in the FACE Form.

10.3 All financial reporting to UNFPA will be performed by the IP in the currency in which the Cash Transfer was made. The IP is not required to convert transactions into United States Dollars or any other currency.

## **11. Programme Supplies Reporting**

11.1 If the Cash Transfer was used to procure Programme Supplies and/or if UNFPA transferred Programme Supplies to the IP under the terms of this Agreement, the IP will, unless otherwise agreed between the Parties in writing, submit reporting on the status and use of the Programme Supplies, using the Programme Supplies Report Form, no later than 15 calendar days after the end of every Quarter. The reports shall be submitted subject to such instructions as issued by UNFPA.

11.2 The Programme Supplies Reports shall include, for each product category of Programme Supplies, the quantities and values of the IP's beginning and ending inventory balances, receipts, and distributions and adjustments, and the different locations where the Programme Supplies are maintained or stored, as reflected in the IP's inventory control system. Programme Supplies Reports shall further disclose any quantities and values of Programme Supplies that have been lost, stolen, destroyed, expired, or otherwise rendered unusable or useless.

## **12. Progress Reporting**

The IP will submit to UNFPA quarterly narrative progress reports against the planned activities contained in the WP and results achieved, using the WP Progress Report Form in the Partner Platform. (However, in the event UNFPA agrees in writing that the use of the Partner Platform is not possible, the IP will prepare a paper copy of the WP Progress Report, ensure that it is duly signed by an Authorized Officer, and submit it in paper form to UNFPA.) Unless otherwise agreed between the Parties in writing, these reports are due 15 calendar days after the end of every Quarter. Narrative progress reports shall include detailed information on the distribution and delivery of any Programme Supplies and on results achieved. Progress reports shall be in English, French, Spanish, or Portuguese. Progress reports in other languages shall be accompanied by an official translation into one of the foregoing languages.

## **13. Winding up of IP's Activities under Workplans**

13.1 In the course of the implementation of the last WP, the Parties shall consult as to the disposition of all Programme Supplies and Non-expendable Equipment provided by UNFPA or acquired from the Cash Transfer. UNFPA may decide that any Non-expendable Equipment and any remaining Programme Supplies shall be transferred for use by another implementing partner or UNFPA. In that case, the IP shall transfer ownership of such Non-expendable Equipment and remaining Programme Supplies in accordance with written instructions by UNFPA.

13.2 Without prejudice to any other provisions of this Agreement, on winding up of the IP's activities under the last WP, the IP shall refund to UNFPA (a) all amounts of money it is not entitled to, including any unspent funds, which shall be reported on the final FACE Form submitted by the IP, and (b) any interest, which shall be reported on the final FACE Form submitted by the IP. Such refunds shall be effected no later than 90 calendar days after the end date of the final WP or the effective date activities have ceased, whichever occurred earlier.

#### 14. **Legal Status**

The IP shall be considered as having the legal status of an independent contractor *vis-à-vis* UNFPA. The IP's employees, personnel, agents and sub-contractors shall not be considered in any respect as being the employees or agents of UNFPA.

#### 15. **IP's Responsibility for Employees, Personnel and Subcontractors**

The IP shall be responsible for the professional and technical competence of its employees, personnel, agents and subcontractors and will select, for work under this Agreement, reliable persons who will perform effectively in the implementation of this Agreement, respect human rights and the local customs, and conform to a high standard of moral and ethical conduct.

#### 16. **Assignment**

The IP shall not assign, transfer, pledge or make other disposition of this Agreement or any parts thereof, including any WPs, or any of IP's rights, claims or obligations under this Agreement except with the prior written consent of UNFPA.

#### 17. **Sub-contracting**

17.1 In the event that the IP requires the services of subcontractors to perform any obligations under this Agreement, IP shall obtain the prior written approval of UNFPA. UNFPA shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor. IP shall be solely responsible for all services and obligations performed by its subcontractors. The use by IP of subcontractors shall not relieve IP of any of its obligations under this Agreement. The terms of any subcontract shall be subject to, conform to and give full effect to the provisions of this Agreement. In particular, IP shall ensure that any subcontract includes provisions substantially the same as clause 27, "Prohibition of Proscribed Practices", clause 28, "Protection from Sexual Exploitation and Sexual Abuse", and includes effective provisions permitting UNFPA and its agents to conduct assurance activities in respect of the subcontractor subject to terms and conditions substantially the same as those included in clause 30, "Assurance Activities".

17.2 Written approval by UNFPA regarding the use of any subcontractor(s) under clause 17.1 shall not, in and of itself, permit the use by the IP of further tiers of subcontractors, including sub-subcontractors. Exceptionally, UNFPA may in any particular case approve in writing the use of further tiers of subcontractors. In such case, the provisions of clause 17.1 on subcontractors shall *mutatis mutandis* apply to each further tier of subcontractors.

#### 18. **Officials not to Benefit**

The IP warrants that no official of UNFPA has received or will be offered by IP any direct or indirect benefit arising from this Agreement or the award thereof. IP agrees that breach of this provision is a breach of an essential term of this Agreement.

#### **19. Indemnification**

The IP shall indemnify, hold and save harmless, and defend, at its own expense, UNFPA, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of IP, or IP's employees, officers, agents or sub-contractors, in the performance of this Agreement and WPs. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by IP, its employees, officers, agents, servants or sub-contractors. The obligations under this clause do not lapse upon termination of this Agreement.

#### **20. Encumbrances/ Liens**

The IP shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office against any monies due or to become due for any work done, services rendered or materials, supplies or equipment furnished under this Agreement, or by reason of any other claim or demand against IP.

#### **21. Copyright, Patents and other Proprietary Rights**

21.1 Except as is otherwise expressly provided in writing in the Agreement, UNFPA shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to products, processes, inventions, ideas, know-how, or documents and other materials which IP has developed under the Agreement and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Agreement, and IP acknowledges and agrees that such products, documents and other materials constitute works made for hire.

21.2 At the request of UNFPA, IP shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNFPA in compliance with the requirements of applicable law.

21.3 Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents, and all other data compiled by or received by IP under this Agreement shall be the property of UNFPA, shall be made available for use or inspection by UNFPA at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to UNFPA authorized officials on completion of work under the Agreement.

#### **22. Use of UNFPA's and IP's Name, Logo and Emblem**

Each of the Parties is permitted to use the other's name, logo, and emblem, as applicable, solely in connection with this Agreement and the implementation of the WPs, unless permission is withdrawn in any particular case by any of the Parties and notified in writing to the other Party. Such withdrawal of permission shall apply with immediate effect unless otherwise stipulated in the notice of withdrawal of permission.

## 23. ***Force Majeure; Other Changes in Conditions***

23.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, IP shall give notice and full particulars in writing to UNFPA, of such occurrence or change if IP is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. IP shall also notify UNFPA of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Agreement. On receipt of the notice required under this clause 23, UNFPA shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to IP of a reasonable extension of time in which to perform its obligations under this Agreement.

23.2 If the IP is rendered permanently unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Agreement, UNFPA shall have the right to suspend or terminate this Agreement on the same terms and conditions as are provided for in clause 24, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

23.3 "*Force majeure*" as used in this clause means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar force or nature, provided that such acts arise from causes beyond the control and without the fault or negligence of the Party concerned.

23.4 The IP acknowledges and agrees that, with respect to any obligations under this Agreement that the IP must perform in or for any areas in which UNFPA is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas or to any incidents of civil unrest occurring in such areas shall not, in and of itself, constitute *force majeure*.

## 24. **Termination**

24.1 Either Party may terminate this Agreement by giving thirty (30) calendar days' written notice to the other Party in each of the following situations:

24.1.1 If it concludes that the other Party has breached its obligations under this Agreement or any WP and has not remedied that breach after having been given not less than fourteen (14) calendar days' written notice to do so with effect from a date specified in such notice; and

24.1.2 If it concludes that the other Party cannot meet its obligations under this Agreement.

24.2 UNFPA may suspend or terminate this Agreement forthwith in each of the following situations:

24.2.1 If implementation of any WP has not commenced within a reasonable time;

24.2.2 If it decides that IP or any of its employees or personnel has or have engaged in any corrupt, fraudulent, collusive, coercive, obstructive or unethical practice (as such



terms are defined in clause 27, “Prohibition of Proscribed Practices”) in connection with this Agreement;

24.2.3 Should UNFPA’s funding decrease, be curtailed or terminated;

24.2.4 Should IP be adjudged bankrupt, or be liquidated or become insolvent, or should IP make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of IP, in which case IP shall immediately inform UNFPA of the occurrence of any of the above events;

24.2.5 If IP or its employees, agents or any other persons engaged by IP to perform any services under this Agreement, engage or have engaged in sexual exploitation or abuse, if IP fails to take preventive measures against sexual exploitation and abuse, if IP fails to investigate allegations of sexual exploitation or abuse, or if IP fails to take corrective action if sexual exploitation or abuse has occurred.

24.3 UNFPA may:

24.3.1 Suspend or terminate this Agreement at any time giving ninety (90) calendar days’ written notice to IP;

24.3.2 Suspend the implementation of any WP or any part thereof, or terminate any WP, at any time with immediate effect.

24.4 The Party receiving a notice of suspension or termination will immediately take all necessary steps to suspend or terminate (as the case may be) its activities in an orderly manner so that continued expenses are kept to a minimum.

24.5 Immediately upon sending or receiving a notice of termination or suspension UNFPA will cease disbursement of any funds or supplies/equipment under this Agreement and IP will not make any forward commitments, financial or otherwise.

24.6 On termination or suspension of this Agreement or any WP, IP will transfer either to UNFPA or in accordance with UNFPA’s instructions the unexpended balance of the Cash Transfer held by IP and the unused supplies and equipment provided by UNFPA under this Agreement, unless otherwise decided by UNFPA and notified to IP in writing in any particular case.

24.7 If UNFPA exercises its right to suspend or terminate this Agreement or any WP, UNFPA will have the right to require IP to repay to UNFPA such amount of money, up to the total amount paid to IP by UNFPA prior to the date of the notice of termination or suspension, as UNFPA shall determine. It is understood that expenditures by the IP in compliance with this Agreement prior to the date of the notice of termination or suspension will not be required to be repaid. The payment owing by IP will be made promptly upon receipt of UNFPA’s notice to pay.

24.8 If UNFPA exercises its right to suspend or terminate this Agreement or any WP and decides that the WP is to be implemented by another organization, IP will promptly provide full cooperation to UNFPA and the other organization in the orderly transfer to the other organization of all unused supplies and equipment provided to IP by UNFPA.

25. **Assessments**

IP agrees that UNFPA may from time to time conduct assessments of IP, including IP's capacity to perform its obligations as an implementing partner in a manner satisfactory to UNFPA and IP's internal control framework ("Assessment"). UNFPA may conduct such Assessments subject to such standards, scope, frequency and timing as decided by UNFPA. IP shall provide its full and timely cooperation with any Assessments. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and records at reasonable times and on reasonable conditions and to grant to UNFPA access to IP's premises at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any Assessments carried out by UNFPA hereunder. It is understood that UNFPA may, at its sole discretion, contract for services of an individual or corporate person to conduct any assessment, or UNFPA may conduct the Assessment with its own staff, employees and agents. IP consents to the disclosure by UNFPA of the Assessment report to any third party that provided financing or co-financing to UNFPA towards the implementation of the relevant parts of the Programme, upon that third party's written request to UNFPA for such disclosure.

## 26. **Evaluation**

The evaluation of the activities performed under this Agreement shall be subject to the provisions of the UNFPA Evaluation Policy as from time to time approved or amended by UNFPA's Executive Board. IP shall provide its full and timely cooperation with any evaluation of the activities performed under this Agreement.

## 27. **Prohibition of Proscribed Practices**

27.1 IP shall not engage in any corrupt, fraudulent, collusive, coercive, obstructive or unethical practices and shall bring allegations of such practices arising in relation to this Agreement, of which IP has been informed or has otherwise become aware, promptly to the attention of the Director, Office of Audit and Investigation Services, UNFPA. IP acknowledges that any corrupt, fraudulent, collusive, coercive, obstructive or unethical practices may lead to the imposition by UNFPA of sanctions (including censure or ineligibility/debarment) with regard to future transactions with UNFPA, at UNFPA's sole discretion and without prejudice to any other right or remedy available to UNFPA. For purposes of this Agreement, the following definitions shall apply: "corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party; "fraudulent practice" means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation; "collusive practice" means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party; "coercive practice" means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party; "obstructive practice" means acts intended to materially impede the exercise of UNFPA's contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to a UNFPA investigation into allegations of fraud and corruption; "unethical practice" means conduct or behaviour that is contrary to staff or supplier codes of conduct, such as those relating to conflict of interest, gifts and hospitality, post-employment provisions, abuse of authority and harassment.

27.2 The IP shall review and take note of the UNFPA Policy against Fraudulent and Other Proscribed Practices, available at

[http://www.unfpa.org/sites/default/files/admin-resource/Eths\\_Fraud\\_policy.pdf](http://www.unfpa.org/sites/default/files/admin-resource/Eths_Fraud_policy.pdf) (or such other URL as UNFPA may from time to time decide).

## 28. Protection from Sexual Exploitation and Sexual Abuse

28.1 Definitions; prohibition of sexual exploitation and abuse. For purposes of this Agreement, “sexual exploitation” means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another; “sexual abuse” means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. Sexual exploitation and abuse are strictly prohibited. IP, its employees, agents or any other persons engaged by IP to perform any services under this Agreement, shall not engage in any sexual exploitation and abuse. IP acknowledges and agrees that UNFPA will apply a policy of “zero tolerance” with regard to sexual exploitation and abuse of anyone by the IP, its employees, agents or any other persons engaged by IP to perform any services under this Agreement.

28.2 Without prejudice to the generality of the foregoing:

28.2.1 Sexual activity with any person less than eighteen years of age (“child”), regardless of any laws relating to the age of majority or to consent, shall constitute the sexual exploitation and abuse of such person. Mistaken belief in the age of a child shall not constitute a defense under this Agreement.

28.2.2 The exchange or promise of exchange of any money, employment, goods, services, or other thing of value, for sex, including sexual favors or sexual activities, shall constitute sexual exploitation and abuse.

28.2.3 IP acknowledges and agrees that sexual relationships between IP’s employees, agents or other persons engaged by IP and beneficiaries of assistance, since they are based on inherently unequal power dynamics, undermine the credibility and integrity of the work of UNFPA and are strongly discouraged.

28.3 Prevention. IP shall take all appropriate measures to prevent sexual exploitation and abuse of anyone by its employees, agents or any other persons engaged by IP to perform any services under this Agreement. *Inter alia*, IP shall ensure that its employees, agents or any other persons engaged by IP and assigned by IP to perform services under this Agreement shall have undertaken and successfully completed appropriate training with regard to protection from of sexual exploitation and abuse. Such training shall include but not be limited to: reference to definitions of sexual exploitation and sexual abuse the same as or substantively similar to those included in clause 28.1; a clear and unambiguous statement that any form of sexual exploitation and abuse is prohibited; the requirement that any allegations of sexual exploitation and abuse must be promptly reported; and the requirement that alleged victims of sexual exploitation and abuse shall be referred for immediate, professional assistance. Where IP has not put in place its own training regarding the prevention of sexual exploitation and abuse, IP may use the training material available at the following URL to fulfil its training-related obligations hereunder: <https://extranet.unfpa.org/Apps/PSEA2017/> (or such other URL as UNFPA may from time to time decide).

28.4 Reporting of allegations to UNFPA. IP shall report allegations of sexual exploitation and abuse, of which IP has been informed or has otherwise become aware, promptly to the Director, Office of Audit and Investigation Services, UNFPA. To the extent legally possible, the IP will

require its employees, agents or any other persons engaged by IP to perform any services under this Agreement, to report allegations of sexual exploitation and abuse arising in relation to this Agreement directly to the Director, Office of Audit and Investigation Services, UNFPA.

28.5 Investigation. IP shall properly and without delay investigate allegations of sexual exploitation and abuse by its employees, agents or any other persons engaged by IP to perform any services under the Agreement. (It is understood, however, that any investigation conducted by the IP under this clause shall be without prejudice to the right of UNFPA under clause 30.3 to conduct investigations.) IP shall keep UNFPA informed during the conduct of the investigation, without prejudice to the due process rights of any persons concerned. Following the conclusion of the investigation by the IP, IP shall promptly provide a copy of the investigation report to UNFPA, without redactions, edits or omissions. Upon request, IP shall provide relevant evidence to UNFPA for examination and further use by UNFPA as deemed necessary solely by UNFPA. UNFPA may decide that the obligation on the part of the IP under the first sentence of this clause to conduct an investigation shall not apply if an investigation is being or has been conducted by competent national authorities. In the event that competent national authorities are conducting or have conducted the investigation, IP shall assist UNFPA and take all necessary steps, to the extent legally possible, for UNFPA to obtain information on the status and outcome of the investigation, including disclosure of a copy of the relevant investigation report.

## 29. **Child Labor**

IP represents and warrants that neither it, its parent entities (if any), nor any of IP's subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral, or social development.

## 30. **Assurance Activities**

### 30.1 Audit

30.1.1 At the request of and at such times as determined solely by UNFPA, IP will have its activities under this Agreement audited. Audits will be performed subject to such standards, scope, frequency and timing as decided by UNFPA (and may cover, *inter alia*, financial transactions, internal controls related to the activities implemented by IP, and the management of Programme Supplies). Upon request by UNFPA, IP shall furnish to UNFPA, prior to the start of the audit, a Letter of Representation to be signed by an Authorized Officer.

30.1.2 Audits as provided under clause 30.1.1 shall be conducted by individual or corporate auditors to be designated by UNFPA, such as, for example, an audit or accounting firm. However, insofar as IP is a Government entity, UNFPA, at the request of the Government, may agree that the audit shall be conducted by the Government's supreme audit institution in accordance with such standards, scope, frequency and timing as determined solely by UNFPA. IP shall provide its full and timely cooperation with any audits. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions and to grant the auditors access to IP's premises at reasonable times and on reasonable conditions in connection with such access

to IP's personnel and relevant documentation and records. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any audits carried out hereunder.

30.1.3 In the event that the audit is conducted by auditors designated by UNFPA, UNFPA or the auditors will provide a copy of the final audit report to IP without delay. In the event that the audit is conducted by the Government's supreme audit institution, IP will provide a copy of the final audit report to UNFPA without delay. IP consents to the disclosure by UNFPA of the audit report to any third party that provided financing or co-financing to UNFPA towards the implementation of the relevant parts of the Programme, upon that third party's written request to UNFPA for such disclosure.

## 30.2 Spot checks

IP agrees that, from time to time, UNFPA may conduct on site reviews ("spot checks"), subject to such standards, scope, frequency and timing as determined solely by UNFPA. IP shall provide its full and timely cooperation with any such spot checks, which shall include IP's obligation to make available its personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions and to grant to UNFPA access to IP's premises at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any spot checks carried out by UNFPA hereunder. It is understood that UNFPA may, at its sole discretion, contract for the services of an individual or corporate person to conduct spot checks, or UNFPA may conduct spot checks with its own staff, employees and agents.

## 30.3 Investigation

IP agrees that UNFPA may conduct investigations, at such times as determined solely by UNFPA, relating to any aspect of this Agreement or the award thereof, the obligations performed under the Agreement, and the operations of the IP relating to performance of this Agreement. The right of UNFPA to conduct investigations shall not lapse upon expiration or prior termination of this Agreement. IP shall provide its full and timely cooperation with any such investigations. Such cooperation shall include, but shall not be limited to, IP's obligation to make available its personnel and any relevant documentation and records at reasonable times and on reasonable conditions and to grant to UNFPA access to the IP's premises at reasonable times and on reasonable conditions. IP shall require its agents, including, but not limited to, IP's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any investigations carried out by UNFPA hereunder. It is understood that UNFPA may, at its sole discretion, contract for investigation services of an individual or corporate person, or UNFPA may conduct investigations with its own staff, employees and agents.

## 31. Refunds/ Offsets

UNFPA shall be entitled to a refund from IP or to make an offset against any amounts payable to IP: for any amounts paid by UNFPA, lost by IP or used by IP other than in accordance with the terms and conditions of this Agreement, including any amounts shown by audits, spot checks or investigations to have been so paid, lost or used; for the value of Programme Supplies and Non-expendable Equipment that have been lost, stolen, destroyed, wasted, or otherwise rendered useless or unusable, while under the custody or control of the IP or the IP's employees, personnel, agents or sub-contractors; for any amounts paid by UNFPA or used by IP as a result of IP or any of its employees, personnel, agents or subcontractors having engaged in any corrupt, fraudulent,

collusive, coercive, obstructive or unethical practice (as such terms are defined in clause 27, “Prohibition of Proscribed Practices”); for any unspent amounts; for the value of any Programme Supplies purchased by IP from the Cash Transfer or transferred by UNFPA to IP under the terms of this Agreement, which have not been distributed or not otherwise used as agreed by UNFPA in writing in any particular case; for any amounts transferred by UNFPA to IP but not included or properly reflected in any financial report (using the FACE Form) or supported by appropriate documentation and records, or for the value of Programme Supplies not included or properly reflected in any Programme Supplies Report or supported by appropriate documentation and records; for any amounts paid by UNFPA in relation to an Ineligible Expenditure; or for any amounts otherwise subject to a refund in accordance with the terms of this Agreement.

### **32. Eligibility**

During the validity of this Agreement, the IP shall provide prompt written notice to UNFPA if it is subject to any sanction (such as debarment, suspension or removal, whether temporary or permanent) imposed by any organization, entity or agency of the United Nations or by any organization within the World Bank group.

### **33. Privileges and Immunities**

Nothing in or relating to this Agreement shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNFPA.

### **34. Observance of the Law**

The IP shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Agreement.

### **35. Authority to Modify**

No modification or change in this Agreement shall be valid and enforceable against UNFPA unless provided by a written amendment to this Agreement signed by a duly authorized officer of UNFPA and an Authorized Officer of IP.

### **36. UN Security Council/ No Support to Terrorism**

The IP agrees to apply the highest reasonable standard of diligence to ensure that cash, supplies and equipment under its control, including but not limited to any cash, supplies and equipment transferred by UNFPA to IP: (a) are not used to provide support to individuals or entities associated with terrorism; (b) are not transferred to any individual or entity included in the Consolidated United Nations Security Council Sanctions List, available at <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list> (or such other URL as the United Nations may from time to time decide); and (c) are not used for the purpose of any payment to persons or entities, or for any import or export of goods, if such payment, import or export is prohibited by a resolution of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

### **37. Environmental Impacts**

The IP will use best efforts to eliminate or substantially reduce any adverse environmental impacts when conducting activities under this Agreement.

## 38. **Dispute Resolution**

38.1 If the IP is a Government entity (including any government subdivision or entity at the national or local level) the following shall apply:

Any dispute between UNFPA and the IP arising out of or relating to this Agreement shall be dealt with in accordance with the provisions of the basic agreement concluded between the Government and UNFPA. Absent the conclusion of any basic agreement, any dispute between UNFPA and the IP arising out of or relating to this Agreement which is not settled by negotiation or other agreed mode of settlement shall be submitted to arbitration at the request of either Party. Each Party shall appoint one arbitrator, and the two arbitrators so appointed should appoint a third, who shall be the chairman. If within thirty days of the request for arbitration either Party has not appointed an arbitrator or if within fifteen days of the appointment of two arbitrators the third arbitrator has not been appointed, either Party may request the President of the International Court of Justice to appoint an arbitrator. The procedure of the arbitration shall be fixed by the arbitrators, and the expenses of the arbitration shall be borne by the Parties as assessed by the arbitrators. The arbitral award shall contain a statement of the reasons on which it is based and shall be accepted by the Parties as the final adjudication of the dispute.

38.2 If the IP is not a Government entity the following shall apply:

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

38.2.2 Any dispute, controversy, or claim between the Parties arising out of this Agreement or the breach, termination, or invalidity thereof, unless settled amicably under the preceding paragraph, within sixty (60) days after receipt by one Party of the other Party’s written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Agreement, order the termination of the Agreement, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Agreement, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim Measures of Protection”) and Article 34 (“Form and Effect of the Award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Agreement, the arbitral tribunal shall have no authority to award interest in excess of the United States Federal Reserve Bank of New York’s Secured Overnight Financing Rate (“SOFR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

## 39. **Data Protection and Security**

39.1 The following terms have the following meaning:

39.1.1 “End User” means, in the event that the implementation of activities by the IP under this Agreement involves the use of any information systems, any and all UNFPA officials, staff, personnel, representatives and agents and any other external users collaborating with UNFPA, in each case, authorized by UNFPA to access information related to the activities, and to use the results of the activities under this Agreement;

39.1.2 “UNFPA Data” shall mean any and all information or data, including UNFPA Personal Data (as defined in clause 40.2, below), in digital form or processed or held in digital form that (a) are provided to the IP by, or on behalf of, UNFPA and/or End Users under the Agreement or through UNFPA’s and/or End Users’ use of the results of the activities or (b) are collected or obtained by the IP in connection with, or related to, the performance of the Agreement;

39.1.3 “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 UNFPA information system or network;

39.1.4 “Security Incident” means, with respect to any information system, service or network used in the implementation of the activities, 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 UNFPA’s Confidential Information (as defined in clause 41, below) or weaken or impair UNFPA’s operations. Security Incidents include any actual, threatened or reasonably suspected unauthorized access to, disclosure of, use of or acquisition of UNFPA Data that compromises the security, confidentiality, or integrity of UNFPA Data, or the ability of UNFPA or End Users to access UNFPA Data.

39.2 All UNFPA Data, together with all rights (including intellectual property and proprietary rights), title and interest to such UNFPA Data, will be the exclusive property of UNFPA, and the IP has a limited, nonexclusive license to access and use the UNFPA Data as provided in the Agreement solely for the purpose of performing its obligations under the Agreement. Except for the foregoing license, the IP will have no other rights, whether express or implied, in or to any UNFPA Data or its content.

39.3 The IP 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 UNFPA Data. The IP shall comply with any guidance or conditions on access, disclosure, retention and destruction notified by UNFPA to the IP in respect of UNFPA Data.

39.4 The IP shall use its reasonable efforts to ensure the logical segregation of UNFPA Data from other information to the fullest extent possible. The IP shall 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 IP's obligations under the Agreement. At UNFPA's request, the IP shall provide UNFPA with copies of the applicable policies and a description of the safeguards and controls that the IP uses to fulfil its obligations under this clause; provided that any such policies and description provided by the IP will be treated as Confidential Information (as defined in clause 41, below) under the Agreement. UNFPA may assess the effectiveness of these safeguards, controls and protective measures and, at UNFPA's request, the IP will provide its full cooperation with any such assessment at no additional cost or expense to UNFPA. The IP shall not, and shall ensure that its personnel will not, transfer, copy, remove or store UNFPA Data from a UNFPA location, network or system without the prior written approval of an authorized official of UNFPA.

39.5 Except as otherwise expressly stated in the Agreement or with UNFPA's express prior written consent, the IP will not install any application or other software on any UNFPA device, network or system. The IP represents and warrants to UNFPA that the results of the activities produced under the Agreement will not contain any Disabling Code, and that UNFPA will not otherwise receive from the IP any Disabling Code in the performance of the Agreement. Without prejudice to UNFPA's other rights and remedies, if a Disabling Code is identified, the IP, at its sole cost and expense, will take all steps necessary to: (a) restore and/or reconstruct any and all UNFPA Data lost by UNFPA and/or end users as a result of disabling code; (b) furnish to UNFPA a corrected version of the relevant product without the presence of Disabling Codes; and (c) as needed, reproduce the relevant product.

39.6 In the event of any Security Incident, the IP will, as soon as possible following the IP's discovery of such Security Incident and at its sole cost and expense: (a) notify UNFPA of such Security Incident and of the IP's proposed remedial actions; (b) implement any and all necessary damage mitigation and remedial actions; and (c) as relevant, restore UNFPA's and, as directed by UNFPA, End Users' access to the relevant products. The IP will keep UNFPA reasonably informed of the progress of the IP's implementation of such damage mitigation and remedial actions. The IP, at its sole cost and expense, will cooperate fully with UNFPA's investigation of, remediation of, and/or response to any Security Incident. If the IP fails to resolve, to UNFPA's reasonable satisfaction, any such Security Incident, UNFPA may suspend or terminate the Agreement or any WP immediately upon notice to the IP, without any liability for termination charges or any other liability of any kind.

39.7 The provisions of this clause shall survive any termination or expiration of the Agreement.

#### 40. **Personal Data**

40.1 UNFPA will handle Personal Data that it obtains from the IP as a result of, or in connection with, the Agreement solely in accordance with its own legal framework.

40.2 "Personal Data" shall mean any information relating to an identified or identifiable individual, and "UNFPA Personal Data" shall mean Personal Data that is obtained by the IP from UNFPA in connection with, or related to, the performance of the Agreement. For the purposes of the Agreement, Personal Data shall be treated as Confidential Information within the meaning of clause 41, below.

40.3 The IP confirms that it has a Personal Data protection policy in place that meets a standard equivalent to the standard applied in the UNFPA Policy and Procedures on Personal Data Protection, available at [https://www.unfpa.org/sites/default/files/admin-resource/ICT\\_Personal\\_Data\\_Protection\\_Policy.pdf](https://www.unfpa.org/sites/default/files/admin-resource/ICT_Personal_Data_Protection_Policy.pdf) (or such other URL as UNFPA may from time to time decide). Unless otherwise provided in the Agreement, the IP shall take all appropriate measures, consistent with applicable laws, that have a bearing on the Agreement, to safeguard UNFPA Personal Data.

40.4 Without prejudice to the generality of clause 40.3 and clause 39, above, and unless otherwise more specifically provided in the Agreement, the IP shall, at a minimum:

40.4.1 process UNFPA Personal Data solely and exclusively in accordance with the requirements of the Agreement, and shall not use UNFPA Personal Data for the IP's research, marketing, sales, promotional, or any other purposes;

40.4.2 implement appropriate technical and organizational measures, including appropriate access-control measures, to ensure that UNFPA Personal Data is accessed on a "need-to-know" basis by IP's authorized personnel only;

40.4.3 implement appropriate data security measures to preserve the integrity of UNFPA Personal Data and prevent any corruption, tampering, loss, damage, unauthorized access and improper disclosure of UNFPA Personal Data;

40.4.4 process UNFPA Personal Data in a manner that is adequate, relevant and limited to what is necessary for the performance of the Agreement, and ensure that UNFPA Personal Data is kept for no longer than is necessary to perform the Agreement;

40.4.5 as and when requested by the UNFPA, update or rectify UNFPA Personal Data to ensure its accuracy;

40.4.6 transfer UNFPA Personal Data to third parties, including the IP's agents or subcontractors, only in accordance with the requirements of the Agreement and on terms and conditions equivalent to those set forth in this clause and clause 41 ("Confidential Nature of Documents and Information");

40.4.7 immediately notify UNFPA in writing upon becoming aware of any personal data breach that affects or might affect UNFPA Personal Data; take immediate mitigating and/or remedial action, including mitigating and/or remedial action as directed by UNFPA; and inform and update on a regular basis UNFPA of any measures taken by the IP to address such personal data breach;

40.4.8 as set forth in the Agreement or as otherwise instructed by UNFPA in writing, the IP shall return, delete or destroy UNFPA Personal Data and, upon written request by UNFPA, provide substantiating evidence of such destruction to UNFPA; and

40.4.9 consult with, and follow the instructions of, UNFPA with respect to handling any requests and/or complaints by third parties in respect of UNFPA Personal Data made available to or received by the IP.

40.5 The provisions of this clause shall survive any termination or expiration of the Agreement.

#### 41. Confidential Nature of Documents and Information

41.1 Information and data that is delivered or disclosed by or on behalf of one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Agreement, and that is designated as confidential (collectively “Confidential Information”), shall be held in confidence by that Party and shall be handled as follows:

41.2 The Recipient shall:

41.2.1 use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser’s Confidential Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate; and,

41.2.2 use the Discloser’s Confidential Information solely for the purpose for which it was disclosed.

41.3 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Confidential Information confidential in accordance with the Agreement and this clause, the Recipient may disclose Confidential Information to:

41.3.1 any other party with the Discloser’s prior written consent; and,

41.3.2 the Recipient’s officials, representatives, employees, staff, personnel, agents and subcontractors who have a need to know such Confidential Information for purposes of performing obligations under the Agreement, and officials, representatives, employees, staff, agents and subcontractors of any legal entity that it controls, controls it, or with which it is under common control, who have a need to know such Confidential Information for purposes of performing obligations under the Agreement, provided that, for these purposes a controlled legal entity means:

- (a) a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; or,
- (b) any entity over which the Party exercises effective managerial control; or,
- (c) for UNFPA, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

41.4 The IP may disclose Confidential Information to the extent required by law, provided that, subject to and without any waiver of the privileges and immunities of the United Nations, including its subsidiary organs, the IP will give UNFPA sufficient prior notice of a request for the disclosure of Confidential Information in order to allow UNFPA to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

41.5 UNFPA may disclose Confidential Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

41.6 The Recipient shall not be precluded from disclosing Confidential Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder.

41.7 These obligations and restrictions of confidentiality shall be effective during the term of the Agreement, including any extension thereof, and, unless otherwise provided in the Agreement, shall remain effective following termination or expiration of the Agreement.

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