

**Contract between the
United Nations Population Fund**

And

[CONTRACTOR'S COMPANY NAME]

Ref.: __/ __/ __

Whereas, the United Nations Population Fund is a subsidiary organ of the United Nations established by the General Assembly pursuant to resolution 3019 (XXVII) of 18 December 1972 (the "UNFPA");

Whereas, the [CONTRACTOR'S COMPANY NAME] is a business entity duly incorporated and organized under the Laws of [COUNTRY] (the "Contractor");

Whereas, the UNFPA wishes to engage the Contractor for the performance of the construction and renovation works, including [DESCRIPTION OF WORKS] at the UNFPA Offices located in [ADDRESS OF PROJECT], as per the technical drawings, specifications, bill of quantities, (hereinafter referred to as the "Works") attached hereto as Annex II;

Whereas, now therefore, the Contractor and the UNFPA, referred to jointly as the "Parties" and each separately as a "Party", hereby agree as follows:

1. Contract Documents

1.1. This document together with the Annexes attached hereto and referred to below, all of which are incorporated herein and made a part hereof (the "Contract Documents"), constitute the entire agreement between UNFPA and the Contractor for the provision of the Works (the "Contract").

Annex I: UNFPA General Conditions for Civil Works (the "General Conditions"),
and

Annex II: Technical Specifications and Drawings [ref. -----, dated -----], and

Annex III: Contractor's technical and financial proposals and response to UNFPA Tender [BID REF NUMBER].

1.2 The Contract Documents are complementary of one another, but in case of ambiguities, discrepancies, or inconsistencies between or among them, the following order of priority shall apply:

1.2.1 First, this document;

- 1.2.2 Second, Annex I;
- 1.2.3 Third, Annex II, and
- 1.2.4 Fourth, Annex III.

1.3. This Contract embodies the entire agreement between the Parties with regard to the subject matter hereof and supersedes all contemporaneous or prior representations, agreements, contracts and proposals, whether written or oral, by and between the Parties on this subject.

2. Obligations of the Contractor

2.1 The Contractor will ensure that the Works will be constructed in accordance with the drawings and specifications, budgets and timelines, as provided in the Technical Specifications and Drawings attached hereto as Annex II and made part of this Contract. The Contractor represents and warrants the accuracy of any information or data provided to UNFPA for the purpose of entering into this Contract, as well as the quality of the Works foreseen under this Contract in accordance with the highest Industry and Professional standards.

2.2 The Contractor shall commence work within [INSERT NUMBER OF DAYS] calendar days from the date on which it shall have been given access to the Site, as this term is defined in Clause 1 of the General Conditions, and received the notice to commence from the Engineer, as this term is defined in Clause 1 of the General Conditions. The Contractor shall submit to the Engineer the site exact shop drawings, and the Programme of Work referred to in Clause 13 of the General Conditions attached to this Contract as Annex I, within [INSERT NUMBER OF DAYS] days after the Contractor has been given access to the Site. Under no circumstances shall the Works commence later than [INSERT NUMBER OF DAYS] days after the Contract has been signed by both Parties.

2.3 The Contractor shall ensure substantial completion of the Works within [INSERT NUMBER OF DAYS] calendar days from the commencement of the Works, and complete any defective works during the Defects Liability Period as defined in Clause 55 of the General Conditions. The Parties agree that the aforementioned time periods include weekly rest days and official holidays as well as days of inclement weather. .

2.4 Substantial completion of the Works or any part thereof shall be determined by the certificate of substantial completion issued by the Engineer (the “Certificate of Substantial Completion”) and acceptance thereof by UNFPA. Final completion of the Works shall be determined by issuance of the final completion certificate by the Engineer (the “Certificate of Final Completion”) and acceptance thereof by UNFPA.

3. Contract price and invoices¹

3.1 In full consideration of the complete and satisfactory performance of the Works under this Contract, UNFPA shall pay the Contractor a fixed contract price of [INSERT CONTRACT

SUM] according to the milestones set forth below and subject to modification on account of any Change Orders approved by UNFPA in writing. The amount shall be paid in [INSERT CURRENCY] according to the UN monthly exchange rate on the date of the payment.

- 3.2 The price of this Contract is not subject to any adjustment or revision because of price or currency fluctuations or the actual costs incurred by the Contractor in the performance of the Contract.
- 3.3 One original and one copy of each invoice issued by the Contractor shall be submitted by the Contractor to the UNFPA and to the Engineer, by mail or by hand to the address specified in Article 7 of this Contract. Invoices shall be submitted upon achievement of the following milestones, and approved by UNFPA engineer before submittal:

MILESTONES (Description of milestones)	AMOUNT	Remarks
1. [INSERT DESCRIPTION OF MILESTONE 1]	Value of Works completed during Milestone 1, less [INSERT %] deduction as retention where applicable.	
2. [INSERT DESCRIPTION OF MILESTONE 2]	Value of Works completed during Milestone 2, less [INSERT %] deduction as retention where applicable.	
3. Ditto [for as many milestones as applicable]		
4. Upon Substantial Completion of the Works, and handover to UNFPA for occupancy.	Balance of the contract sum, less [INSERT %] deduction as retention, and deduction of Liquidated Damages.	
5. Upon Final Completion and expiration of Defects Liability Period.	Cumulative value of retention, less deduction for any outstanding defects liability costs.	

- 3.4 The Engineer shall inspect the Works and verify that the milestones have been achieved and shall approve the amount in the Contractor’s invoice by issuing a certificate of payment to UNFPA and the Contractor. The Engineer, after having consulted with UNFPA, may make corrections to that amount, in which case UNFPA may only effect payment for the amount so corrected. The Engineer shall inspect and process the invoices submitted by the Contractor within [INSERT NUMBER OF DAYS] days of receipt thereof.
- 3.5 UNFPA shall only effect payment of such amounts of the Contractor’s invoices which have been verified by the Engineer and confirmed by way of issuance of the respective certificate of payment by the Engineer.

3.6 Payments effected by UNFPA to the Contractor shall be deemed neither to relieve the Contractor from its obligations under this Contract nor as acceptance by UNFPA of the Contractor's performance of the Works.

3.7 Payment of the Contractor's final invoice shall be effected by UNFPA after issuance of the Final Completion certificate by the Engineer and acceptance thereof by UNFPA.

4. Special conditions (Delete as applicable)

4.1 The Performance Bond referred to in Clause 10 of the General Conditions shall be submitted by the Contractor for an amount equivalent to [INSERT %] of the contract sum, which is equivalent to [INSERT AMOUNT] (AMOUNT IN WORDS).

4.2 The Contractor shall submit samples of materials for the approval of the Engineer prior to installing them on the Works.

4.3 The liability insurance referred to in Clause 22 of the General Conditions shall be taken out by the Contractor.

4.4 According to Clause 52 of the General Conditions, the liquidated damages for delay shall be [INSERT %] of the total Contract price per week of delay, up to a maximum of ten percent (10%) of the total price of the Contract.

4.5 The Defects Liability Bond shall be submitted by the Contractor for an amount of [INSERT %] of the contract sum, which is equivalent to USD [INSERT AMOUNT] (AMOUNT IN WORDS)

5. Time and manner of payment

5.1 Without prejudice to Article 3 of this Contract, invoices shall be paid within thirty (30) days of the date of their receipt and acceptance by UNFPA.

5.2 All payments shall be made by UNFPA to the following Bank account of the Contractor:

Bank:

Account Number:

Branch:

6. Modifications

6.1 Any modification to this Contract shall require an amendment in writing between both Parties duly signed by the authorized representatives of the Contractor and UNFPA.

7. Notifications

7.1 Any notice, request or approval required or permitted to be given or made under the Contract shall be made in writing in the English language. Such notice, request or approval, shall be deemed to be duly given or made when it shall have been delivered by either (i) personal delivery against receipt, (ii) recognized overnight delivery service, (iii) postage prepaid, return receipt requested certified mail, or (iv) email, addressed to the party or parties for whom intended at the addresses shown below or such other addresses as intended recipient previously shall have designated by written notice previously given pursuant to the Contract.

For the purpose of notifications under this Contract, the addresses of UNFPA and the Contractor are as follows:

For the UNFPA:

Name:

Title:

United Nations Population Fund

Address:

Tel:

Fax:

Email:

For the Contractor:

Name:

Title:

[CONTRACTOR'S COMPANY NAME]

Address:

Tel:

Email:

7.2 UNFPA shall communicate as soon as possible to the Contractor after the signature of the Contract, the address of the Engineer for the purposes of communication with the Engineer under the Contract.

8. Entry into force; term

8.1 This Contract comes into force on the date the last of the Parties has signed this Contract (the "Effective Date") and shall remain effective until completion of the Works to UNFPA's satisfaction (the "Contract Term"), unless terminated in accordance with the terms of this Contract.

In witness whereof, the undersigned, duly authorized representatives of the Parties, have signed the present Contract in two copies.

For the Contractor

For the UNFPA:

Name:

Name:

Title:

Title: UNFPA Representative

Date: _____

Date: _____

ANNEX I

UNFPA GENERAL CONDITIONS OF CONTRACT FOR WORKS

1. DEFINITIONS

In this Contract, the term:

- a) "Contractor" means [CONTRACTOR'S COMPANY NAME].
- b) "Engineer" means the individual whose services have been engaged by UNFPA to administer the Contract as provided therein.
- c) "Temporary Works" shall include items to be constructed which are not intended to be permanent and form part of the Works.
- d) "UNFPA" means the United Nations Population Fund, a subsidiary organ of the United Nations established by the General Assembly in resolution 3019 (XXVII).
- e) "Drawings" and "Specifications" mean the drawings and specifications further described in the "Technical Specifications and Drawings of [INSERT DATE AND REF NUMBERS] _attached hereto as Annex II including any modification thereof or addition thereto furnished by the Engineer or submitted by the Contractor and approved in writing by the Engineer in accordance with the Contract.
- f) "Bill of Quantities" is the document in which the Contractor indicates the cost of the Works, on the basis of the foreseen quantities of items of work and the fixed unit prices applicable to them.
- g) "Contract Price" means the sum agreed in the Contract as payable to the Contractor for the execution and completion of the Works and for remedying of any defects therein in accordance with the Contract.
- h) "Site" means the land and structures on, under, in or through which the Works or Temporary Works are to be constructed.
- i) "Shop Drawings" means accurate production drawings based on actual site measurements.
- j) "Product Data" means detailed technical information on the product as provided by the manufacturer.

2. SINGULAR AND PLURAL

Words importing the singular only shall also include the plural and vice versa where the context requires.

3. HEADINGS OR NOTES

The headings or notes in the Contract shall not be deemed to be part thereof or be taken into consideration in their interpretation.

4. LEGAL STATUS

The Contractor shall have the legal status of an independent contractor vis-à-vis UNFPA, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

This Contract shall not be construed to create any contractual relationship of any kind between the Engineer and the Contractor, but the Engineer shall, in accordance with his/her duties and responsibilities under the Contract, be entitled to administer, monitor and enforce the performance of the Contractor's obligations in accordance with this Contract.

5. RESPONSIBILITIES OF ENGINEER

- a) The Engineer shall administer the Contract and facilitate the completion of the Works as provided for in this Contract. In particular, the Engineer shall perform the following functions:
- b) The Engineer shall be the UNFPA's representative vis-à-vis the Contractor for the entire Contract Term. The Engineer shall advise and consult with the UNFPA throughout the whole period of this Contract. The UNFPA's instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the UNFPA only to the extent provided in this Contract. The duties, responsibilities and limitations of authority of the Engineer as the UNFPA's representative during construction as set forth in the Contract shall not be modified or extended without the written consent of the UNFPA.
- c) The Engineer shall at all times have access to the constructions sites and Works wherever and whether in preparation or progress. The Contractor shall provide facilities for such access so that the Engineer is enabled to perform his functions under the Contract.
- d) The Engineer shall not be responsible for and will not have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Works or the Temporary Works. The Engineer shall not be responsible for or have control or charge over the acts or omissions of the Contractor (including the Contractor's failure to carry out the Works in accordance with the Contract) and of Sub-contractors or any of their agents or employees, or any other persons performing services for the Works, except if such acts or omissions are caused by the Engineer's failure to perform his functions in accordance with the contract between the Employer and the Engineer.

- e) The Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and samples, but only for conformity with the design concept of the Works and in accordance with the provisions of the Contract. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component. i
- f) The Engineer shall interpret the requirements of the Contract and judge the performance thereunder by the Contractor. All interpretations and orders of the Engineer shall be consistent with the intent of and reasonably inferable from this Contract and shall be in writing or in the form of drawings. Either Party may make a written request to the Engineer for such interpretation. The Engineer shall render the interpretation necessary for the proper execution of the Works with reasonable promptness and in accordance with any time limit agreed upon between the Engineer and the Parties. Any claim or dispute between the Parties arising from the interpretation of the Contract by the Engineer or relating to the execution or progress of the Works shall be settled between the Parties in accordance with Clause 80 of the General Conditions.
- g) Except as otherwise provided in the Contract, the Engineer shall have no authority to relieve the Contractor of any of his obligations under the Contract nor to order any work involving delay in completion of the Works or any extra payment to the Contractor by the UNFPA, or to make any variations to the Works.
- h) In the event of termination of the engagement of the Engineer, the UNFPA shall appoint another suitable professional to perform the Engineer's duties.
- i) The Engineer shall have authority to reject work which does not conform to the Contract. Whenever, in his opinion, he considers it necessary or advisable for the implementation of the Contract, he will have authority to require special inspection or testing of the work whether or not such work be then fabricated, installed or completed.
- j) The Engineer shall conduct inspections to determine the dates of substantial completion and final completion, shall receive and forward to the UNFPA for the UNFPA's review written warranties and related documents required by the Contract and assembled by the Contractor, and shall issue a final certificate for payment upon compliance with the requirements of Clause 55 hereof and in accordance with the Contract.
- k) If the UNFPA and Engineer so agree, the Engineer shall provide one or more Engineer's representative(s) to assist the Engineer in carrying out his responsibilities at the site. The Engineer shall notify in writing to the Contractor and the UNFPA the duties, responsibilities and limitations of authority of any such Engineer's Representative(s).

6. CONTRACTOR'S GENERAL OBLIGATIONS/RESPONSIBILITIES

6.1.Obligation to Perform in Accordance with Contract

The Contractor shall execute and complete the Works and remedy any defects therein in strict accordance with the Contract, with due care and diligence and to the satisfaction of the Engineer and UNFPA, and shall provide all labor, including the supervision thereof, materials, constructional plant and all other things, whether of a temporary or permanent nature, required in and for such execution, completion and remedying of defects, as far as the necessity for providing the same is specified in or is reasonably to be inferred from the Contract. The Contractor shall comply with and adhere strictly to the Engineer's instructions and directions on any matter, touching or concerning the Works.

6.2 Responsibility for Site Operations

The Contractor shall take full responsibility for the adequacy, stability and safety of all Site operations and methods of construction, provided that the Contractor shall not be responsible, except as may be expressly provided in the Contract, for the design or specification of the Permanent Works or of any Temporary Works prepared by the Engineer.

6.3.Responsibility for Contractor's personnel

- a) The Contractor shall be responsible for the professional and technical competence of its officials, employees, agents, servants, subcontractors and other representatives (the Contractor's "Personnel") it assigns to perform work under the Contract and will select 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.
- b) Such Contractor's Personnel shall be professionally qualified and, if required to work with officials or staff of UNFPA, shall be able to do so effectively. The qualifications of any Personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any Personnel originally proposed by the Contractor.
- c) At the option of and in the sole discretion of UNFPA:
 - i) the qualifications of Personnel proposed by the Contractor (e.g., a curriculum vitae) may be reviewed by UNFPA prior to such personnel's performing any obligations under the Contract;
 - ii) any Personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of UNFPA prior to such Personnel's performing any obligations under the Contract; and,
 - iii) in cases in which, pursuant to the above, UNFPA has reviewed the qualifications of such Contractor's Personnel, UNFPA may reasonably refuse to accept any such Personnel.

- c) Requirements specified in the Contract regarding the number or qualifications of the Contractor's Personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:
 - i) UNFPA may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor's Personnel, and such request shall not be unreasonably refused by the Contractor.
 - ii) Any of the Contractor's Personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of UNFPA, which shall not be unreasonably withheld.
 - iii) The withdrawal or replacement of the Contractor's Personnel shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract.
 - iv) All expenses related to the withdrawal or replacement of the Contractor's Personnel shall, in all cases, be borne exclusively by the Contractor.
 - v) Any request by UNFPA for the withdrawal or replacement of the Contractor's Personnel shall not be considered to be a termination, in whole or in part, of the Contract, and UNFPA shall not bear any liability in respect of such withdrawn or replaced Personnel.
 - vi) If a request for the withdrawal or replacement of the Contractor's Personnel is not based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the Personnel, or the inability of such Personnel to reasonably work together with UNFPA officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's Personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such Personnel's being withdrawn or replaced.
- d) Nothing in the paragraphs above, shall be construed to create any obligations on the part of UNFPA with respect to the Contractor's Personnel assigned to perform work under the Contract, and such Personnel shall remain the sole responsibility of the Contractor.
- e) The Contractor shall be responsible for requiring that all Personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of UNFPA shall:
 - i) undergo or comply with security screening requirements made known to the Contractor by UNFPA, including but not limited to, a review of any criminal history;
 - ii) when within UNFPA premises or on UNFPA property, display such identification as may be approved and furnished by UNFPA, and that upon the withdrawal or replacement of any such Personnel or upon termination or completion of the Contract, such Personnel shall immediately return any such identification to UNFPA for cancellation.

- f) Within one (1) working day after learning that any of Contractor's Personnel who have access to the Site or any other UNFPA premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform UNFPA about the particulars of the charges then known and shall continue to inform UNFPA concerning all substantial developments regarding the disposition of such charges.
- g) All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within UNFPA premises or on UNFPA property shall be confined to areas authorized or approved by UNFPA. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within UNFPA premises or on UNFPA property without appropriate authorization from UNFPA.

6.4.Source of Instructions

The Contractor shall neither seek nor accept instructions from any authority external to the UNFPA, the Engineer or their authorized representatives in connection with the performance of its obligations under this Contract. Should any authority external to UNFPA seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify UNFPA and provide all reasonable assistance required by UNFPA. The Contractor shall refrain from any action which may adversely affect the interests of UNFPA and the Contractor shall perform its obligations under the Contract with fullest regard to the interests of the United Nations and UNFPA.

6.5.Officials Not to Benefit

The Contractor warrants that it has not and shall not offer any representative, official, employee, or other agent of the UNFPA any direct or indirect benefit arising from or related to the performance of this Contract or of any other contract with UNFPA or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

6.6.Use of Name, Emblem or Official Seal of UNFPA or the United Nations

Neither Party, without prior approval by the other Party in each instance, shall use in any advertisement, public announcement, press release or promotional endeavor, the other Party's name, any abbreviation thereof, or its emblem, logo or marks. Neither Party shall represent, directly or indirectly, that its activities, performance or work products have been approved or endorsed by the other Party.

6.7.Confidential Nature of Documents

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under the Contract

shall be the property of the UNFPA, shall be treated as confidential and shall be delivered only to the duly authorized representative of the UNFPA on completion of the Works; their contents shall not be made known by the Contractor to any person other than the Contractor's Personnel performing obligations under this Contract without the prior written consent of the UNFPA.

7. ASSIGNMENT AND SUBCONTRACTING

7.1. Assignment of Contract

The Contractor shall not, except after obtaining the prior written consent of the UNFPA, assign, transfer, pledge or make other disposition of this Contract or any part thereof, or of any of the Contractor's rights, claims or obligations under this Contract.

7.2. Subcontracting

In the event the Contractor requires the services of subcontractors, the Contractor shall obtain the prior written approval and clearance of the UNFPA for all such subcontractors. The approval of the UNFPA shall not relieve the Contractor of any of its obligations under this Contract. The terms of any subcontract shall be subject to and conform to the provisions of this Contract.

8. DRAWINGS

8.1. Custody of drawings

The drawings shall remain in the sole custody of the UNFPA but two (2) copies thereof shall be furnished to the Contractor free of cost. The Contractor shall provide and make at his own expense any further copies required by him. At the completion of the Works, the Contractor shall return to the UNFPA all drawings provided under the Contract.

8.2. One copy of Drawings to be kept on Site

One copy of the Drawings furnished to the Contractor as aforesaid shall be kept by the Contractor on the Site and the same shall at all reasonable times be available for inspection and use by the Engineer and by any other person authorized in writing by the Engineer.

8.3. Disruption of Progress

The Contractor shall give written notice without delay to the Engineer whenever planning or progress of the Works is likely to be delayed or disrupted unless any further drawing or order, including a direction, instruction or approval, is issued by the Engineer within a reasonable time. The notice shall include details of drawing or order required and of why and by when it is required and of any delay or disruption likely to be suffered if it is late.

9. WORK BOOK

The Contractor shall maintain a work book at the Site with numbered pages, in one original and two copies (the “Work Book”). The Engineer shall have full authority to issue new orders, drawings and instructions to the Contractor, from time to time and as required for the correct execution of the Works. The Contractor shall be bound to follow such orders, drawings and instructions.

Every order shall be dated and signed by the Engineer and the Contractor, in order to account for its receipt.

Should the Contractor want to refuse an order in the Work Book, he shall so inform the UNFPA and the Engineer, by means of an annotation in the Work Book made within three (3) days from the date of the order that the Contractor intends to refuse. Failure by the Contractor to adhere to this procedure shall result in the order being deemed accepted with no further possibility of refusal.

The original of the Work Book shall be delivered to the UNFPA at the time of final acceptance of the Works. A copy shall be kept by the Engineer and another copy by the Contractor.

10. PERFORMANCE SECURITY

- a) As guarantee for its proper and efficient performance of the Contract, the Contractor shall on signature of the Contract furnish the UNFPA with a Performance Security issued for the benefit of the UNFPA. The amount and character of such security (bond or guarantee) shall be as indicated in the Contract.
- b) The Performance Bond or Bank Guarantee must be issued by an acceptable insurance company or accredited bank, in the format included in Appendix I to these General Conditions, and must be valid up to twenty-eight days after issuance by the Engineer of the Certificate of Final Completion. The Performance Bond or Bank Guarantee shall be returned to the Contractor within twenty-eight (28) days after the issuance by the Engineer of the Certificate of Final Completion and acceptance thereof by UNFPA, provided that the Contractor shall have paid all money owed to the UNFPA under the Contract.
- c) If the surety of the Performance Bond or Bank Guarantee is declared bankrupt or becomes insolvent or its right to do business in the country of execution of the Works is terminated, the Contractor shall within five (5) days thereafter substitute another bond or guarantee and surety, both of which must be acceptable to the UNFPA.

11. INSPECTION OF SITE

The Contractor shall be deemed to have inspected and examined the site and its surroundings and to have satisfied himself before submitting its proposal and signing this Contract as to all matters relative to the nature of the land and subsoil, the form and nature of the Site, details and levels of existing pipe lines, conduits, sewers, drains, cables or other existing services, the

quantities and nature of the work and materials necessary for the completion of the Works, the means of access to the Site, and the accommodation it may require, and in general to have obtained all necessary information as to risk contingencies, climatic, hydrological and natural conditions and other circumstances which may influence or affect its performance under the Contract, and no claims will be entertained in this connection against the UNFPA.

12. SUFFICIENCY OF TENDER

The Contractor shall be deemed to have satisfied himself before tendering as to the correctness and sufficiency of his Tender for the construction of the Works and of the rates and prices, which rates and prices shall, except in so far as it is otherwise provided in the Contract, cover all his obligations under the Contract and all matters and things necessary for the proper execution and completion of the Works.

13. PROGRAMME OF WORK TO BE FURNISHED

Within the time limit specified in the Contract, the Contractor shall submit to the Engineer for his consent a detailed Programme of Work showing the order of procedure and the method in which he proposes to carry out the Works. In preparing his Programme of Work the Contractor shall pay due regard to the priority required by certain works. Should the Engineer, during the progress of work, require further modifications to the Programme of Work, the Contractor shall review the said program. The Contractor shall also whenever required by the Engineer submit particulars in writing of the Contractor's arrangements for carrying out the Works and of the constructional plant and Temporary Works which the Contractor intends to supply, use or construct as the case may be. The submission of such program, or any modifications thereto, or the particulars required by the Engineer, shall not relieve the Contractor of any of his duties or obligations under the Contract nor shall the incorporation of any modification to the Programme of Work either at the commencement of the contract or during its course entitle the Contractor to any additional payments in consequence thereof.

14. REGULAR SITE MEETINGS

A [INSERT FREQUENCY] site meeting shall be held between the UNFPA Project Coordinator, if any, the representative of the Contractor and the Engineer or the Engineer's Representative, in order to verify that the Works are progressing normally and are executed in accordance with the Contract.

15. CHANGE ORDERS

- a) The Engineer may instruct the Contractor, only with the prior written approval of the UNFPA and by means of change orders, all variations in quantity or quality of the Works, in whole or in part, that are deemed necessary by the Engineer ("Change Orders"). The Contractor shall only act upon the Engineer's Change Orders after having been provided with UNFPA's written approval.
- b) Processing of Change Orders shall be governed by Clause 60 of these General Conditions.

16. CONTRACTOR'S SUPERINTENDENCE

The Contractor shall provide all necessary superintendence during the execution of the Works and as long thereafter as the Engineer may consider necessary for the proper fulfillment of the Contractor's obligations under the Contract. The Contractor or a competent and authorized agent or representative of the Contractor approved in writing by the Engineer, which approval may at any time be withdrawn, shall be constantly on the site and shall devote his entire time to the superintendence of the Works. Such authorized agent or representative shall receive on behalf of the Contractor directions and instructions from the Engineer. If the approval of such agent or representative shall be withdrawn by the Engineer, in accordance with this Contract, or if the removal of such agent or representative shall be requested by the UNFPA in accordance with this Contract, the Contractor shall as soon as it is practicable after receiving notice of such withdrawal remove the agent or representative from the Site, and replace him by another agent or representative approved by the Engineer and UNFPA. The Contractor shall not thereafter deploy, in any capacity whatsoever, a removed agent or representative again on the Site.

17. SETTING-OUT

The Contractor shall be responsible for the true and proper setting out of the Works in relation to original points, lines and levels of reference given by the Engineer in writing and for the correctness of the position, levels, dimensions and alignment of all parts of the Works and for the provision of all necessary instruments, appliances and labor in connection therewith. If, at any time during the progress of the Works, any error shall appear or arise in the position, levels, dimensions or alignment of any part of the Works, the Contractor, on being required so to do by the Engineer, shall, at his own cost, rectify such error to the satisfaction of the Engineer and UNFPA.

18. WATCHING AND LIGHTING

The Contractor shall in connection with the Works provide and maintain at his own cost all lights, guards, fencing and watching when and where necessary or required by the Engineer or by any duly constituted authority for the protection of the Works and the materials and equipment utilized therefor or for the safety and convenience of the public or others.

19. CARE OF WORKS

- a) From the commencement date of the Works to the date of final completion as stated in the Certificate of Final Completion, the Contractor shall take full responsibility for the care thereof and of all Temporary Works. In the event that any damage or loss should happen to the Works or to any part thereof or to any Temporary Works or any part thereof from any cause whatsoever (save and except as shall be due to Force Majeure as defined in these General Conditions), the Contractor shall at his own cost repair and make good the same so that, at completion, the Works shall be in good order and condition and in conformity in every respect

with the requirements of the Contract and the Engineer's instructions. The Contractor shall also be liable for any damage to the Works occasioned by it or its officials, employees, agents, servants, subcontractors and other representatives in the course of any operations carried out for the purpose of complying with its obligations as set out in this Contract.

- b) The Contractor shall be fully responsible for the review of the engineering design and details of the Works and shall inform the UNFPA of any mistakes or incorrectness in such design and details which would affect the Works.

20. INSURANCE OF WORKS, ETC.

Without limiting its obligations and responsibilities under Clause 19 of these General Conditions, the Contractor shall insure immediately following signature of this Contract, in the joint names of the UNFPA and the Contractor (a) for the entire Contract Term, i.e. until final completion of the Works, against all loss or damage from whatever cause arising, other than cause of Force majeure as defined in these General Conditions, and (b) against loss or damage for which the Contractor is responsible, in such manner that the UNFPA and the Contractor are covered for the period stipulated in Clause 19 a) hereof and are also covered during the Defects Liability Period for loss or damage arising from a cause occurring prior to the commencement of the Defects Liability Period and for any loss or damage occasioned by the Contractor in the course of any operations carried out by him for the purpose of complying with its obligations under Clause 55 hereof:

- a) The Works, together with the materials and plant for incorporation therein, to their full replacement cost, plus an additional sum of ten (10) per cent of such replacement cost, to cover any additional costs of and incidental to the rectification of loss or damage including professional fees and the cost of demolishing and removing any part of the Works and of removing debris of whatsoever nature;
- b) The Contractor's equipment and other things brought on to the Site by the Contractor to the replacement value of such equipment and other things;
- c) An insurance to cover the liabilities and warranties of Clause 64 of these General Conditions;

Such insurance shall be effected with an insurer and in terms approved by the UNFPA, which approval shall not be unreasonably withheld, and the Contractor shall, whenever required, produce to the Engineer the policy or policies of insurance and the receipts for payment of the current premiums.

21. DAMAGE TO PERSONS AND PROPERTY

- a) The Contractor shall indemnify, hold and save harmless and defend at his own expense the UNFPA, and its officers, agents and employees from and against all suits, claims, demands, proceedings, losses and liability of any nature or kind, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to any acts or omissions of the Contractor,

or of any subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give rise to legal liability to anyone not a party to the Contract, including, without limitation, claims and liability in the nature of a claim for workers' compensation as well as claims resulting from injuries or damages to any person or any property whatsoever.

- b) The indemnity set forth in this Clause above, shall not apply to a claim of infringement relating to the interference, whether temporary or permanent, with any right of light, airway or water or other easement or quasi-easement which is the unavoidable result of the construction of the Works in accordance with the Contract.
- c) In addition to the indemnity obligations set forth in this Clause, the Contractor shall be obligated, at its sole expense, to defend UNFPA and its officers, agents and employees, pursuant to this Clause, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.
- d) UNFPA shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of the United Nations, including its subsidiary organs, or any matter relating thereto, for which only UNFPA itself is authorized to assert and maintain. UNFPA shall 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.

22. LIABILITY INSURANCE

- 22.1 The Contractor shall pay UNFPA promptly for all loss, destruction, or damage to the property of UNFPA caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.
- 22.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:
 - a) insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - b) workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
 - c) liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations

liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; and,

- d) such other insurance as may be agreed upon in writing between UNFPA and the Contractor.

22.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.

22.4 The Contractor acknowledges and agrees that UNFPA accepts no responsibility for providing life, health, accident, travel or any other insurance coverage which may be necessary or desirable in respect of any personnel performing services for the Contractor in connection with the Contract.

22.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by UNFPA, in its sole discretion, for purposes of fulfilling the Contractor's requirements for providing insurance under the Contract, the insurance policies required under the Contract shall:

- a) name UNFPA as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
- b) include a waiver of subrogation of the Contractor's insurance carrier's rights against UNFPA;
- c) provide that UNFPA shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; and,
- d) include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to UNFPA.

22.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.

22.7 Except for any self-insurance program maintained by the Contractor and approved by UNFPA for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to UNFPA. Prior to the commencement of any obligations under the Contract, the Contractor shall provide UNFPA with evidence, in the form of certificate of insurance or such other form as UNFPA may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. UNFPA reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the

Contract. Notwithstanding the provisions of Clause 22.5 c) above, the Contractor shall promptly notify UNFPA concerning any cancellation or material change of insurance coverage required under the Contract.

- 22.8 The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as set forth in the Contract nor the amount of any such insurance, including, but not limited to, any deductible or retention relating thereto, shall in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

23. REMEDY ON CONTRACTOR'S FAILURE TO INSURE

If the Contractor shall fail to effect and keep in force any of the insurances explicitly referred to in this Contract, or any other insurance which may be required to effect under the terms of the Contract, the UNFPA may in any such case effect and keep in force any such insurance and pay such premium as may be necessary for that purpose and from time to time deduct the amount so paid by the UNFPA as aforesaid from any monies due or which may become due to the Contractor, or recover the same as a debt due from the Contractor.

24. COMPLIANCE WITH STATUTES, REGULATIONS, ETC.

- a) The Contractor shall comply with all laws, by-laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. Accordingly, the Contractor shall give all notices and pay all fees and charges required to be given or paid by any laws, by-laws, ordinances, rules and regulations or any local or other duly constituted authority in relation to the execution of the Works or of any Temporary Works and by the rules and regulations of all public bodies and entities whose property or rights are affected or may be affected in any way by the Works or any Temporary Works.
- b) The Contractor shall keep the UNFPA indemnified against all penalties and liabilities of every kind for breach of any of the laws, by-laws, ordinances, rules, and regulations or requirements mentioned in this Clause of these General Conditions.

25. FOSSILS, ETC.

All fossils, coins, articles of value or antiquity and structures and other remains or things of geological or archaeological interest discovered on the Site of the Works shall as between the UNFPA and the Contractor be deemed to be the absolute property of the UNFPA and the Contractor shall take reasonable precautions to prevent its workmen or any other persons from removing or damaging any such article or thing and shall immediately upon discovery thereof and before removal acquaint the UNFPA of such discovery and carry out at the expense of the UNFPA the Engineer's orders as to the disposal of the same.

26. COPYRIGHT, PATENT AND OTHER PROPRIETARY RIGHTS, AND ROYALTIES

- a) The Contractor shall hold harmless and fully indemnify the UNFPA from and against all claims and proceedings for or on account of infringement of any patent rights, design trademark or name or other protected rights in respect of any plant, equipment, machine, work or material used for or in connection with the Works or Temporary Works and from and against all claims, demands proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, except where such infringement results from compliance with the design or Specification provided by the Engineer.
- b) Except where otherwise specified, the Contractor shall pay all tonnage and other royalties, rent and other payments or compensation, if any, for getting stone, sand, gravel, clay or other materials required for the Works or Temporary Works.

27. INTERFERENCE WITH TRAFFIC AND ADJOINING PROPERTIES

All operations necessary for the execution of the Works and for the Construction of any Temporary Works shall, so far as compliance with the requirements of the Contract permits, be carried on so as not to interfere unnecessarily or improperly with the public convenience, or the access to, use and occupation of, public or private roads and footpaths to or of properties whether in the possession of the UNFPA or of any other person. The Contractor shall hold harmless and indemnify the UNFPA in respect of all claims, demands, proceedings, damages, costs, charges and expenses whatsoever arising out of or in relation to any such matters.

28. EXTRAORDINARY TRAFFIC AND SPECIAL LOADS

- a) The Contractor shall use every reasonable means to prevent any of the roads or bridges communicating with or on the routes to the Site from being damaged by any traffic of the Contractor or any of his sub-contractors and, in particular, shall select routes, choose and use vehicles and restrict and distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of plant and material from and to the Site shall be limited as far as reasonably possible and so that no unnecessary damage may be occasioned to such roads and bridges.
- b) Should it be found necessary for the Contractor to move any load of constructional plant, machinery, pre-constructed units or parts of units of work, or other thing, over part of a road or bridge, the moving whereof is likely to damage any such road or bridge unless special protection or strengthening is carried out, then the Contractor shall before moving the load on to such road or bridge, save insofar as the Contract otherwise provide, be responsible for and shall pay for the cost of strengthening any such bridge or altering or improving any such road to avoid such damage, and the Contractor shall indemnify and keep the UNFPA indemnified against all claims for damage to any such road or bridge caused by such movement, including such claim as may be made directly against the UNFPA, and shall negotiate and pay all claims arising solely out of such damage.

29. CONTRACTOR TO KEEP SITE CLEAN

During the progress of the Works, the Contractor shall keep the Site reasonably free from all unnecessary obstruction and shall store or dispose of any constructional plant and surplus materials and clear away and remove from the Site any wreckage, rubbish or Temporary Works no longer required.

30. CLEARANCE OF SITE ON SUBSTANTIAL COMPLETION

On the substantial completion of the Works, the Contractor shall clear away and remove from the Site all constructional plant surplus materials, rubbish and Temporary Works of every kind and leave the whole of the Site and Works clean and in a workmanlike condition to the satisfaction of the Engineer.

31. LABOUR

31.1 Engagement of Labour

The Contractor shall make its own arrangements for the engagement of all labour local or otherwise.

31.2 Supply of Water

The Contractor shall provide on the Site to the satisfaction of the Engineer an adequate supply of drinking and other water for the use of the Contractor's staff and work people.

31.3 Alcoholic Drinks or Drugs

The Contractor shall comply with Government laws and regulations and orders in force as regards the import, sale, barter or disposal of alcoholic drinks or narcotics and he shall not allow or facilitate such importation, sale, gift, barter or disposal by his sub-contractors, agents or employees.

32. Arms and Ammunition

The restrictions specified in Clause 31.3 above shall include all kinds of arms and ammunition.

33. Epidemics

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

34. Disorderly Conduct, etc.

The Contractor shall at all times take all reasonable precautions to prevent any unlawful riotous or disorderly conduct by or amongst its employees, agents, officials, servants or other representatives.

35. Observance by Sub-Contractors

The Contractor shall be considered responsible for the observance of the above provisions by its sub-contractors.

36. Legislation applicable to Labour

The Contractor shall abide by all applicable legislation and regulation with regard to labour.

37. RETURNS OF LABOUR, PLANT, ETC.

The Contractor shall, if required by the Engineer, deliver to the Engineer at his office, a return in detail in the form and at such intervals as the Engineer may prescribe showing the supervisory staff and the numbers of the several classes of labour from time to time employed by the Contractor on the Site and such information respecting constructional plant as the Engineer may require.

38. MATERIALS, WORKMANSHIP AND TESTING

38.1 Materials and Workmanship

- a) All materials and workmanship shall be of the respective kinds described in the Contract and in accordance with the Engineer's instructions and shall be subjected from time to time to such tests as the Engineer may direct at the place of manufacture or fabrication, or on the Site or at all or any of such places. The Contractor shall provide such assistance, instruments, machines, labour and materials as are normally required for examining, measuring and testing any work and the quality, weight or quantity of any materials used and shall supply samples of materials before incorporation in the Works for testing as may be selected and required by the Engineer. All testing equipment and instruments provided by the Contractor shall be used only by the Engineer or by the Contractor in accordance with the instructions of the Engineer.
- b) No material not conforming with the Specifications in the Contract may be used for the Works without prior written approval of the UNFPA and instruction of the Engineer, provided always that if the use of such material results or may result in increasing the Contract Price, the procedure in Clause 60 of these General Conditions shall apply.

39. Cost of Samples

All samples shall be supplied by the Contractor at his own cost unless the supply thereof is clearly intended in the Specifications or Bill of Quantities to be at the cost of the UNFPA. Payment will not be made for samples which do not comply with the Specifications.

40. Cost of Tests

The Contractor shall bear the costs of any of the following tests:

- a) Those clearly intended by or provided for in the Contract.
- b) Those involving load testing or tests to ensure that the design of the whole of the Works or any part of the Works is appropriate for the purpose which it was intended to fulfill.

41. ACCESS TO SITE

With the prior-knowledge of the Contractor, the UNFPA and the Engineer and any persons authorized by either of them shall, at all times, have access to the Works and to the Site and to all workshops and places where work is being prepared or whence materials, manufactured articles or machinery are being obtained for the Works and the Contractor shall afford every facility for and every assistance in or in obtaining the right to such access.

42. EXAMINATION OF WORK BEFORE COVERING UP

No work shall be covered up or put out of view without the approval of the Engineer and the Contractor shall afford full opportunity for the Engineer to examine and measure any work which is about to be covered up or put out of view and to examine foundations before permanent work is placed thereon. The Contractor shall give due notice to the Engineer whenever any such work or foundations is or are ready or about to be ready for examination and the Engineer shall without unreasonable delay, unless he considers it unnecessary and advises the Contractor accordingly, attend for the purpose of examining and measuring such work or of examining such foundations.

43. REMOVAL OF IMPROPER WORK AND MATERIALS

43.1 Engineer's power to order removal

The Engineer shall during the progress of the Works have power to order in writing from time to time, and the Contractor shall execute at his cost and expense, the following operations:

- a) The removal from the Site within such time or times as may be specified in the order of any materials which in the opinion of the Engineer are not in accordance with the Contract;
- b) The substitution of proper and suitable materials; and

- c) The removal and proper re-execution (notwithstanding any previous test thereof or interim payment therefore) of any work which in respect of materials or workmanship is not in the opinion of the Engineer in accordance with the Contract.

44. Default of Contractor in carrying out Engineer's Instructions

In case of default on the part of the Contractor in carrying out an instruction of the Engineer, the UNFPA shall be entitled to employ and pay other persons to carry out the same and all expenses consequent thereon or incidental thereto shall be borne by the Contractor. UNFPA is entitled to recover such expenses from the Contractor by way of deducting the respective amounts from any monies due or which may become due by UNFPA to the Contractor.

45. SUSPENSION OF WORK

The Contractor shall on the written order of the Engineer suspend the progress of the Works or any part thereof for such time or times and in such manner as the Engineer may consider necessary and shall, during such suspension, properly protect and secure the Works so far as it is necessary in the opinion of the Engineer. The UNFPA should be notified by the Engineer and its written approval should be sought before any suspension of work..

46. POSSESSION OF SITE

46.1 Access to Site

The UNFPA shall with the Engineer's written advice to commence the Works, give to the Contractor possession of so much of the Site as may be required to enable the Contractor to commence and proceed with the construction of the Works in accordance with the Work Programme referred to in Clause 13 of these General Conditions and otherwise in accordance with such reasonable proposals of the Contractor as it shall make to the Engineer by notice in writing, and shall from time to time as the Works proceed give to the Contractor possession of such further portions of the Site as may be required to enable the Contractor to proceed with the construction of the Works with due dispatch in accordance with the said Programme or proposals, as the case may be.

47. Wayleaves, etc.

The Contractor shall bear all expenses and charges for special temporary wayleaves required by it in connection with access to the Site. The Contractor shall also provide at his own cost any additional accommodation outside the Site required by it for the purpose of the Works.

48. Limits of the Site

Except as defined below, the limits of the Site shall be as defined in the Contract. Should the Contractor require land beyond the Site, it shall provide it entirely at his own expense and before taking possession shall supply the Engineer with a copy of the necessary permits. Access to the Site is available where the Site adjoins a public road but it is not provided unless

shown on the Drawings. When necessary for the safety and convenience of workmen, public or livestock or for the protection of the Works, the Contractor shall, at his own expense, provide adequate temporary fencing to the whole or part of the Site. The Contractor shall not disturb, damage or pull down any hedge, tree or building within the Site without the written consent of the Engineer.

49. TIME FOR COMPLETION

Subject to any requirement in the Contract as to completion of any section of the Works, the whole of the Works shall be completed, in accordance with the provisions of Clauses 53 and 55 of these General Conditions, within the time frame stated in the Contract.

50. EXTENSION OF TIME FOR COMPLETION

If, subject to the provisions of the Contract, the Engineer orders alterations or additions in the Works in accordance with Clause 60 of these General Conditions, or if circumstances constituting force majeure as defined in the Contract have occurred, the Contractor shall be entitled to apply for an extension of the time for completion of the Works specified in the Contract. The UNFPA, with the advice of the Engineer, shall, upon such application, determine the period of any such extension of time; provided that in the case of alterations or additions in the Works, the application for such an extension must be made before the alterations or additions in the Works are undertaken by the Contractor.

51. RATE OF PROGRESS

The whole of the materials, plant and labour to be provided by the Contractor and the mode, manner and speed of execution and completion of the Works are to be of a kind and conducted in a manner to the satisfaction of the Engineer. Should the rate of progress of the Works or any part thereof be at any time in the opinion of the Engineer too slow to ensure the completion of the Works by the prescribed time or extended time for completion, the Engineer shall so notify the Contractor in writing and the Contractor shall thereupon take such steps as the Contractor may think necessary and the Engineer may approve to expedite progress so as to complete the Works by the prescribed time or extended time for completion. If the work is not being carried on by day and by night and the Contractor shall request permission to work by night as well as by day, then, if the Engineer shall grant such permission, the Contractor shall not be entitled to any additional payment. All work at night shall be carried out without unreasonable noise and disturbance. The Contractor shall indemnify the UNFPA from and against any claims or liability for damages on account of noise or other disturbance created while or in carrying out the work and from and against all claims, demands, proceedings, costs and expenses whatsoever in regard or in relation to such noise or other disturbance. The Contractor shall submit in triplicate to the Engineer at the end of each month signed copies of explanatory drawings or any other material showing the progress of the Works.

52. LIQUIDATED DAMAGES FOR DELAY

- a) If the Contractor shall fail to complete the Works within the time for completion prescribed in the Contract, or any extended time for completion in accordance with the Contract, then the Contractor shall pay to the UNFPA the sum specified in the Contract as liquidated damages, for the delay between the time prescribed in the Contract or the extended time for completion, as the case may be, and the date of substantial completion of the Works as stated in the Certificate of Substantial Completion, subject to the applicable limit stated in the Contract. The said sum shall be payable by the sole fact of the delay without the need for any previous notice or proof of damage, which shall in all cases be considered as ascertained. The UNFPA may, without prejudice to any other method of recovery, deduct the amount of such liquidated damages from any monies in its hands due or which may become due to the Contractor. The payment or deduction of such damages shall not relieve the Contractor from his obligation to complete the Works or from any other of his obligations and liabilities under the Contract.
- b) If, before the time for completion of the whole of the Works or of a section of the Works, a Certificate of Substantial Completion has been issued for any part or section of the Works, the liquidated damages for delay in completion of the remainder of the Works or of that section may, for any period of delay after the date stated in such Certificate of Substantial Completion, and in the absence of alternative provisions in the Contract, be reduced in the proportion which the value of the part or section so certified bears to the total value of the whole of the Works or section, as applicable. The provisions of this Sub-Clause shall only apply to the rate of liquidated damages and shall not affect the limit thereof.

53. CERTIFICATE OF SUBSTANTIAL COMPLETION

53.1 Substantial Completion of the Works

When the whole of the Works has been substantially completed and have satisfactorily passed any test on completion prescribed by the Contract, the Contractor may give a notice to that effect to the Engineer accompanied by an undertaking to finish any outstanding work during the Defects Liability Period. Such notice and undertaking shall be in writing and shall be deemed to be a request by the Contractor, for the Engineer to issue a Certificate of Substantial Completion in respect of the Works. The Engineer shall, within twenty-one (21) days of the date of delivery of such notice either issue to the Contractor, with a copy to the UNFPA, a Certificate of Substantial Completion stating the date on which, in his opinion, the Works were substantially completed in accordance with the Contract or give instructions in writing to the Contractor specifying all the work which, in the Engineer's opinion, requires to be done by the Contractor before the issuance of such Certificate. The Engineer shall also notify the Contractor of any defects in the Works affecting substantial completion that may appear after such instructions and before completion of the work specified therein. The Contractor shall be entitled to receive such Certificate of Substantial Completion within twenty-one (21) days of completion, to the satisfaction of the Engineer, of the work so specified and making good any defect so notified. Upon issuance of the Certificate of Substantial Completion of the Works, the Contractor shall be deemed to have undertaken to complete with due expedition any outstanding work during the Defects Liability Period.

54. Substantial Completion of Sections or Parts of the Works

In accordance with the procedure in Sub-Clause (1) of this Clause and on the same conditions as provided therein, the Contractor may request the Engineer to issue, and the Engineer may issue, a Certificate of Substantial Completion in respect of any Section or part of the Works which has been substantially completed and has satisfactorily passed any tests on completion prescribed by the Contract, if:

- a) a separate time for completion is provided in the Contract in respect of such section or part of the Works;
- b) such section or part of the Works has been completed to the satisfaction of the Engineer and is required by the UNFPA for his occupation or use.

Upon the issuance of such Certificate, the Contractor shall be deemed to have undertaken to complete any outstanding work during the Defects Liability Period.

55. DEFECTS LIABILITY

55.1 Defects Liability Period

The expression "Defects Liability Period" shall mean the period of twelve (12) months, calculated from the date of substantial completion of the Works stated in the Certificate of Substantial Completion issued by the Engineer or, in respect of any Section or part of the Works for which a separate Certificate of Substantial Completion has been issued, from the date of completion of that Section or part as stated in the relevant Certificate. The expression the "Works" shall, in respect of the Defects Liability Period, be construed accordingly.

56. Completion of Outstanding Work and Remedying of Defects

During the Defects Liability Period, the Contractor shall finish the work, if any, outstanding at the date of the Certificate of Substantial Completion, and shall execute all such work of repair, amendment, reconstruction, rectification and making good defects, imperfections, shrinkages or other faults as may be required of the Contractor in writing by the Engineer during the Defects Liability Period, and within fourteen (14) days after its expiration, as a result of an inspection made by or on behalf of the Engineer prior to expiration of the Defects Liability Period.

57. Cost of Execution of Work of Repair, etc.

All such outstanding work shall be carried out by the Contractor at its own expense if the necessity thereof shall, in the opinion of the Engineer, be due to the use of material or workmanship not in accordance with the Contract, or to neglect or failure on the part of the Contractor to comply with any obligation expressed or implied, on the Contractor's part under the Contract.

58. Remedy on Contractor's Failure to Carry Out Work Required

If the Contractor shall fail to do any such work outstanding on the Works, the UNFPA shall be entitled to employ and pay other persons to carry out the same, and all expenses consequent thereon or incidental thereto shall be recoverable from the Contractor by the UNFPA, and may be deducted by the UNFPA from any monies due or which may become due to the Contractor.

59. Certificate of Final Completion

Upon satisfactory completion of the work outstanding on the Works, the Engineer shall within twenty eight (28) days of the expiration of the Defects Liability period issue a Certificate of Final Completion to the Contractor. The Works shall be deemed to be completed upon issuance of such Certificate and acceptance thereof by UNFPA, provided that the provisions of the Contract which remain unperformed and the settlement of disputes provision of these General Conditions shall remain in force for as long as is necessary to dispose of any outstanding matters or issues between the Parties

60. ALTERATIONS, ADDITIONS AND OMISSIONS

1 Variations not Increasing Cost of Contract

The Engineer may within his duties instruct any variations to the form and type of the Works or any part thereof which he considers technically necessary for the effective execution of the works without having a cost effect on the contract sum, and for that purpose he shall have the UNFPA's authority to order the Contractor to do and the Contractor shall do any of the following:

- (a) increase or decrease the quantity of any work under the Contract;
- (b) omit any such work;
- (c) change the levels, lines, positions and dimensions of any part of the Works;
- (d) execute additional work of any kind necessary for the completion of the Works, and no such variation shall change the contract sum nor in any way vitiate or invalidate the Contract.

2 Variations Increasing Cost of Contract or altering the Works.

The Engineer shall, however, obtain the prior-written approval of the UNFPA before giving any order for any variations which may result in an increase of the Contract Price or in an essential alteration of the quantity, quality or character of the Works.

3 Orders for Variations to be in Writing

No variations shall be made by the Contractor without an order in writing from the Engineer. Variations requiring the written approval of the UNFPA under paragraph (2) of this Clause shall be made by the Contractor only upon written order from the Engineer accompanied by a copy of the UNFPA's approval. Provided that, subject to the provisions of the Contract, no order in writing shall be required for any increase or decrease in the quantity of any work where such increase or decrease is not the result of an order given under this Clause but is the result of the quantities exceeding or being less than those stated in the Bill of Quantities.

4 Valuation of Variations

The Engineer shall estimate to the UNFPA the amount to be added or deducted from the Contract Price in respect of any variation, addition or omission. In the case of any variation, addition or omission which may result in an increase of the Contract Price, the Engineer shall communicate such estimate to the UNFPA together with his request for the UNFPA's written approval of such variation, addition or omission. The value of any variation, addition or omission shall be calculated on the basis of the unit prices contained in the Bill of Quantities.

61. PLANT, TEMPORARY WORKS AND MATERIALS

1 Plant, etc., Exclusive Use for the Works

All constructional plant, Temporary Works and materials provided by the Contractor shall, when brought on the Site, be deemed to be exclusively intended for the construction and completion of the Works and the Contractor shall not remove the same or any part thereof (save for the purpose of moving it from one part of the Site to another) without the consent in writing of the Engineer which shall not be unreasonably withheld.

2 Removal of Plant, etc.

Upon completion of the Works the Contractor shall remove from the Site all the said constructional plant and Temporary Works remaining thereon and any unused materials provided by the Contractor.

3 UNFPA not liable for Damage to Plant

The UNFPA shall not be at any time liable for the loss of any of the said constructional plant, Temporary Works or Materials save if such loss results from the act or neglect of the UNFPA, its employees or agents.

4 Ownership of paid material and work

All material and work covered by payments made by the UNFPA to the Contractor shall thereupon become the sole property of the UNFPA, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which

payments have been made or the restoration of any damaged work or as waiving the right of the UNFPA to require the fulfillment of all of the terms of the Contract.

5 Equipment and supplies furnished by UNFPA

Title to any equipment and supplies which may be furnished by the UNFPA shall rest with the UNFPA and any such equipment and supplies shall be returned to the UNFPA at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment when returned to the UNFPA, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear.

62. APPROVAL OF MATERIALS ETC., NOT IMPLIED

The operation of Clause 61 hereof shall not be deemed to imply any approval by the Engineer of the materials or other matters referred to therein nor shall it prevent the rejection of any such materials at any time by the Engineer.

63. MEASUREMENT OF WORKS

The Engineer shall, when he requires any part or parts of the Works to be measured, give notice to the Contractor or the Contractor's authorized agent or representative who shall forthwith attend or send a qualified agent to assist the Engineer in making such measurement and shall furnish all particulars required by either of them. Should the Contractor not attend or neglect or omit to send such agent, then the measurement made by the Engineer or approved by him shall be taken to be the correct measurement of the work. The purpose of measuring is to ascertain the volume of work executed by the Contractor and therefore determine the amount of the monthly payments.

64. . Contractor Responsible

Notwithstanding any other provisions in this Contract, the Contractor shall be responsible for and shall bear any and all risks of loss or damage to or failure of the Works or any part thereof for a period of ten (10) years after issuance of the Certificate of Final Completion, provided always that such risks, damage or failure result from acts, defaults and negligence of the Contractor, its agents, employees or workmen and such contractors.

1 Unfulfilled Obligations

Notwithstanding the issue of the Certificate of Final Completion, the Contractor shall remain liable for the fulfillment of any obligation incurred under the provisions of the Contract prior to the issuance of the Certificate of Final Completion and which remains unperformed at the time such Certificate is issued. For the purpose of determining the nature and extent of any such obligation the Contract shall be deemed to remain in force between the parties hereto.

65. AUTHORITIES

- 1 Without prejudice to any of UNFPA's termination rights under this Contract, the UNFPA shall have the right to enter upon the Site and expel the Contractor therefrom without thereby terminating or otherwise voiding the Contract or releasing the Contractor from any of its obligations or liabilities under the Contract or affecting the rights and powers of the UNFPA and the Engineer provided for in this Contract in any of the following cases:
- (a) If the Contractor is declared bankrupt or claims bankruptcy or court protection against its creditors or if the Contractor is a company or member of a company which was dissolved by legal action;
 - (b) If the Contractor makes arrangements with its creditors or agrees to carry out the Contract under an inspection committee of its creditors;
 - (c) If the Contractor withdraws from the Works or assigns the Contract to others in whole or in part without the UNFPA's prior written approval;
 - (d) If the Contractor fails to commence the Works or shows insufficient progress to the extent which in the opinion of the Engineer will not enable him to meet the target completion date of the Works;
 - (e) If the Contractor suspends the progress of the Works without due cause for fifteen (15) days after receiving from the Engineer written notice to proceed;
 - (f) If the Contractor fails to comply with any of the Contract conditions or fails to fulfill his obligations and does not remedy the cause of his failure within fifteen (15) days after being notified to do so in writing;
 - (g) If the Contractor is not executing the work in accordance with standards of workmanship specified in the Contract;
 - (h) If the Contractor gives or promises to give a present or loan or reward to any employee, officer agent or other representative of the UNFPA or of the Engineer.

Then the UNFPA may himself complete the Works or may employ any other contractor to complete the Works and the UNFPA or such other contractor may use for such completion so much of constructional plant, Temporary Works and materials, which have been deemed to be reserved exclusively for the construction and completion of the Works under the provision of the Contract as he or they may think proper and the UNFPA may at any time sell any of the said constructional plant, Temporary Works and unused materials and apply the proceeds of sale in or towards the satisfaction of any sums due or which may become due to him from the Contractor under the Contract.

2 Evaluation after Re-entry

The Engineer shall as soon as may be practicable after any such entry and expulsion by the UNFPA notify the Contractor to attend the necessary evaluation of the Works. In the event that for any reason the Contractor does not attend such evaluation the Engineer shall undertake the said evaluation in the absence of the Contractor and shall issue a certificate stating the sum, if any, due to the Contractor for work done in accordance with the Contract up to the time of entry and expulsion by the UNFPA which has been reasonably accumulated to the Contractor in respect of the Works he has executed in such case in accordance with the Contract. The Engineer shall indicate the value of the materials whether unused or partially used and the value of construction equipment and any part of the Temporary Works.

3 Payment After Re-entry

If the UNFPA shall enter and expel the Contractor under this Clause it shall not be liable to pay the Contractor any money on account of the Contract until the expiration of the Defects Liability Period, and thereafter until the costs of completion and making good any defects of the Works, damages for delay in completion (if any), and all other expenses incurred by the UNFPA have been ascertained and their amount certified by the Engineer. The Contractor shall then be entitled to receive only such sum or sums (if any) as the Engineer may certify would have been due to him upon due completion by him after deducting the said amount. But if such amount shall exceed the sum which would have been payable to the Contractor on due completion by him, then the Contractor shall upon demand pay to the UNFPA the amount of such excess. The UNFPA in such case may recover this amount from any money due to the Contractor from the UNFPA without the need to resort to legal procedures.

66. URGENT REPAIRS

If by reason of any accident or failure or other event occurring to, in or in connection with the Works or any part thereof either during the execution of the Works or during the Defects Liability Period any remedial or other work or repair shall in the opinion of the Engineer be urgently necessary for security and the Contractor is unable or unwilling at once to do such work or repair, the UNFPA may by its own or other workmen do such work or repair as the Engineer may consider necessary. All costs and charges properly incurred by the UNFPA in so doing shall on demand be paid by the Contractor to the UNFPA or may be deducted by the UNFPA from any monies due or which may become due to the Contractor provided always that the Engineer shall as soon after the occurrence of any such emergency as may be reasonably practicable notify the Contractor thereof in writing.

67. INCREASE AND DECREASE OF COSTS

Except if otherwise provided by the Contract, no adjustment of the Contract Price shall be made in respect of fluctuations of market, prices of labour, materials, plant or equipment,

neither due to fluctuation in interest rates nor devaluation or any other matters affecting the Works.

68. TAX EXEMPTION

Article II, Section 7, of the Convention on the Privileges and Immunities of the United Nations 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. In the event any governmental authority refuses to recognize the exemptions of UNFPA from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with UNFPA to determine a mutually acceptable procedure.

The Contractor authorizes UNFPA to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with UNFPA before the payment thereof and UNFPA has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, the Contractor shall provide UNFPA with written evidence that payment of such taxes, duties or charges has been made and appropriately authorized, and UNFPA shall reimburse the Contractor for any such taxes, duties, or charges so authorized by UNFPA and paid by the Contractor under written protest.

69. BLASTING

The Contractor shall not use any explosives without the written permission of the Engineer who shall require that the Contractor has complied in full with the regulations in force regarding the use of explosives. However, the Contractor, before applying to obtain these explosives, has to provide well-arranged storage facilities. The Engineer's approval or refusal to permit the use of explosives shall not constitute ground for claims by the Contractor.

70. MACHINERY

The Contractor shall be responsible for coordinating the manufacture, delivery, erection and commissioning of plant machinery and equipment which are to form a part of the Works. It shall place all necessary orders as soon as possible after the signing of the Contract. These orders and their acceptance shall be produced to the Engineer on request. The Contractor shall also be responsible for ensuring that all sub-contractors adhere to such programs as are agreed and are needed to ensure completion of the Works within the period for completion. Should any sub-contracted works be delayed, the Contractor shall initiate the necessary action to speed up such completion. This shall not prejudice the UNFPA's right to exercise ITS remedies for delay in accordance with the Contract.

71. TEMPORARY WORKS AND REINSTATEMENT

The Contractor shall provide and maintain all temporary roads and tracks necessary for movement of plant and materials and clear same away at completion and make good all works damaged or disturbed. The Contractor shall submit drawings and full particulars of all Temporary Works to the Engineer before commencing same. The Engineer may require modifications to be made if he considers them to be insufficient and the Contractor shall give effect to such modifications but shall not be relieved of his responsibilities. The Contractor shall provide and maintain weather-proof sheds for storage of material pertinent to the Works both for his own use and for the use of the UNFPA and clear same away at the completion of the Works. The Contractor shall divert as required, at his own cost and subject to the approval of the Engineer, all public utilities encountered during the progress of the Works, except those specially indicated on the drawings as being included in the Contract. Where diversions of services are not required in connection with the Works, the Contractor shall uphold, maintain and keep the same in working order in existing locations. The Contractor shall make good, at his own expense, all damage to telephone, telegraph and electric cable or wires, sewers, water or other pipes and other services, except where the Public Authority or Private Party owning or responsible for the same elects to make good the damage. The costs incurred in so doing shall be paid by the Contractor to the Public Authority or Private Party on demand.

72. PHOTOGRAPHS AND ADVERTISING

The Contractor shall not publish any photographs of the Works or allow the Works to be used in any form of advertising whatsoever without the prior approval in writing from the UNFPA.

73. DEALING WITH CORRUPTION

Allegations of corrupt, fraudulent, collusive, coercive, obstructive and unethical practices (“Proscribed Practices”) in relation to this Contract shall be dealt with in accordance with the terms of the UNFPA Oversight Policy as approved and from time to time revised by the UNFPA Executive Board. Without prejudice to the foregoing and to any of UNFPA’s rights to terminate this Contract, UNFPA shall be entitled to terminate the Contract forthwith and to recover from the Contractor the amount of any loss resulting from such termination, if the Contractor has offered or given any person any gift or consideration of any kind as an inducement or reward for doing or intending to do any action in relation to the obtaining or the execution of the Contract or any other contract with the UNFPA or for showing or intending to show favour or disfavour to any person in relation to the Contract or any other contract with the UNFPA, if the like acts shall have been done by any persons employed by the Contractor or acting on its behalf whether with or without the knowledge of the Contractor in relation to this or any other Contract with the UNFPA.

74. LANGUAGE, WEIGHTS AND MEASURES

Except as may be otherwise specified in the Contract, English shall be used by the Contractor in all written communications to the UNFPA or the Engineer with respect to the performance under this Contract and with respect to all documents procured or prepared by the Contractor pertaining to the Works. The metric system of weights and measures shall be used in all instances.

75. FORCE MAJEURE

In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the affected Party shall give notice and full particulars in writing to the other Party, of such occurrence or cause if the affected Party is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The affected Party shall also notify the other Party of any other changes in condition or the occurrence of any event which interferes or threatens to interfere with its performance of the Contract. Not more than fifteen (15) days following the provision of such notice of force majeure or other changes in condition or occurrence, the affected Party shall also submit a statement to the other Party of estimated expenditures that will likely be incurred for the duration of the change in condition or the event of force majeure. On receipt of the notice or notices required hereunder, the Party not affected by the occurrence of a cause constituting force majeure shall take such action as it reasonably considers being appropriate or necessary in the circumstances, including the granting to the affected Party of a reasonable extension of time in which to perform any obligations under the Contract.

If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations and meet its responsibilities under the Contract, UNFPA shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Clause 77 of the General Conditions, except that the period of notice shall be seven (7) days instead of fourteen (14) days. In any case, UNFPA shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of force majeure for any period in excess of ninety (90) days.

Force majeure as used herein 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 nature or force, provided that such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which UNFPA is engaged in, preparing to engage in, or disengaging from any 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 under the Contract.

76. SUSPENSION OF PAYMENTS BY THE UNFPA

The UNFPA may by written notice to the Contractor suspend for a specified period, in whole or in part, payments to the Contractor and/or the Contractor's obligation to continue to perform the Works under this Contract, if in the UNFPA's sole discretion:

- (a) any conditions arise which interfere, or threaten to interfere with the successful execution of the Works or the accomplishment of the purpose thereof, or
- (b) the Contractor shall have failed, in whole or in part, to perform any of the terms and conditions of this Contract.

After suspension under sub-paragraph (a) above, the Contractor shall be entitled to reimbursement by the UNFPA of such costs as shall have been duly incurred in accordance with this Contract prior to the commencement of the period of such suspension.

77. TERMINATION BY THE UNFPA

77.1 The UNFPA may, notwithstanding any suspension under Clause 76 above, terminate this Contract for cause or convenience in the interest of the UNFPA upon not less than fourteen (14) days written notice to the Contractor.

77.2 In the event of any termination of this Contract, upon receipt of notice of termination that has been issued by UNFPA, the Contractor shall, except as may be directed by UNFPA in the notice of termination or otherwise in writing:

- (a) take immediate steps to terminate his performance of the Contract in a prompt and orderly manner and, in doing so, reduce expenses to a minimum;
- (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;
- (c) place no further subcontracts or orders for materials, services, or facilities, except as UNFPA and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;
- (d) terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;
- (e) transfer title and deliver to UNFPA the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;
- (f) deliver all completed or partially completed plans, drawings, information, and other property that, if the Contract had been completed, would be required to be furnished to UNFPA thereunder;
- (g) complete performance of the work not terminated; and,
- (h) take any other action that may be necessary, or that UNFPA may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which UNFPA has or may be reasonably expected to acquire an interest.

- 77.3 In the event of any termination of the Contract, UNFPA shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, UNFPA shall not be liable to pay the Contractor except for those services/works provided to UNFPA in accordance with the requirements of the Contract, but only if such services/works were requested or otherwise provided prior to the Contractor's receipt of notice of termination from UNFPA or prior to the Contractor's tendering of notice of termination to UNFPA.
- 77.4 UNFPA may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:
- a) the Contractor 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;
 - b) the Contractor is granted a moratorium or a stay, or is declared insolvent;
 - c) the Contractor makes an assignment for the benefit of one or more of its creditors;
 - d) a Receiver is appointed on account of the insolvency of the Contractor;
 - e) the Contractor offers a settlement in lieu of bankruptcy or receivership; or,
 - f) UNFPA reasonably determines that the Contractor has become 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.
- 77.5 Except as prohibited by law, the Contractor shall be bound to compensate UNFPA for all damages and costs, including, but not limited to, all costs incurred by UNFPA in any legal or non-legal proceedings, as a result of any of the events specified in paragraph 4 of this Clause, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform UNFPA of the occurrence of any of the events specified in paragraph 4 of this Clause, above, and shall provide UNFPA with any information pertinent thereto.
- 77.6 The provisions of this Clause are without prejudice to any other rights or remedies of UNFPA under the Contract or otherwise.

78. TERMINATION BY THE CONTRACTOR

In the case of any alleged breach by the UNFPA of the Contract or in any other situation which the Contractor reasonably considers to entitle it to terminate the Contract, the Contractor shall promptly give ample written notice to the UNFPA detailing the nature and the circumstances of the breach or other situation. Upon acknowledgement in writing by the UNFPA of the existence of such breach and the UNFPA's inability to remedy it, or upon failure of the UNFPA to respond to such notice within twenty (20) days of receipt thereof, the Contractor shall be entitled to terminate this Contract by giving thirty (30) days written notice thereof.

79. RIGHTS AND REMEDIES OF THE UNFPA

Nothing in or relating to this Contract shall be deemed to prejudice or constitute a waiver of any other rights or remedies of the UNFPA.

80. SETTLEMENT OF DISPUTES

- 80.1 The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract 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.
- 80.2 Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 16.1, above, 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 Contract, order the termination of the Contract, 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 Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 (“Interim measures”) and Article 34 (“Form and effect of the award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate (“LIBOR”) then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

81. PRIVILEGES AND IMMUNITIES

Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of the United Nations including.

82. SECURITY

- 82.1. The Contractor shall be fully responsible for the safety and security of its Personnel and for the safekeeping of all assets, equipment and supplies in the custody of the Contractor or its Personnel.

82.2 The Contractor shall:

82.2.1. Put in place and maintain its own security plan, taking into account the security situation in the country where the Works are being provided;

82.2.2. Assume all risks and liabilities related to the Contractor's security, assets entrusted to it by UNFPA and the full implementation of its own security plan.

82.3 The Contractor and its Personnel are neither subject to, nor obliged to adhere to the United Nations Security Management policies and procedures, except insofar as they relate to the utilization of UNFPA's assets, equipment and supplies, or as required to perform the Works under this Contract.

82.4 UNFPA may lend reasonable assistance, when possible and to the extent feasible, to the Contractor and its Personnel. Any travel or financial assistance provided shall be on a space-available and reimbursable basis.

82.5 UNFPA may, at its sole discretion, consent to the inclusion of the Contractor and its Personnel in the UNFPA security plan to the extent that it applies within the country where the Works are being performed on the same terms that are offered to implementing partners of UNFPA. Notwithstanding this provision, the Contractor acknowledges and agrees that the UNFPA shall have no obligation to evacuate Personnel from the country where the Works are being provided in case of emergency or due to security developments.

82.6 Notwithstanding the foregoing, the Contractor acknowledges and agrees that the UNFPA shall not be liable to the Contractor, or its Personnel, in connection with the provision, or failure to provide, any security assistance pursuant to this Clause or otherwise, and the Contractor shall indemnify, defend, hold and save harmless the UNFPA and its officials, employees and agents from and against any claim or liability of any nature arising in respect of any safety or security related incident, including without limitation, the death, injury or illness of any Personnel, or the loss, damage, destruction, sabotage or theft of any assets, equipment or supplies in the custody of the Contractor or its Personnel. The foregoing indemnity is without prejudice to any other indemnity provided by the Contractor, or any other rights or remedies of the UNFPA, under this Contract.

82.7. Upon the Contractor's request, UNFPA may, at its sole discretion, provide security advisory information to the Contractor.

83. AUDIT AND INVESTIGATIONS

Each invoice paid by UNFPA shall be subject to a post-payment audit by auditors, whether internal or external, of UNFPA or the United Nations or by other authorized and qualified agents of the UNFPA or the United Nations at any time during the Contract Term and for a period of three (3) years following the expiration or prior termination of the Contract. The UNFPA shall be entitled to a refund from the Contractor for any amounts shown by such

audits to have been paid by the UNFPA other than in accordance with the terms and conditions of the Contract.

UNFPA may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to performance of the Contract at any time during the term of the Contract and for a period of three (3) years following the expiration or prior termination of the Contract.

The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to UNFPA access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's Personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by UNFPA or the United Nations hereunder.

84. ANTI-TERRORISM

The Contractor agrees to undertake all reasonable efforts to ensure that none of the UNFPA funds received under this Contract are used to provide support to individuals or entities associated with terrorism and that the recipients of any amounts provided by UNFPA hereunder do not appear on the list maintained by the Security Council Committee established pursuant to resolution 1267 (1999). The list can be accessed via <http://www.un.org/Docs/sc/committees/1267/1267ListEng.htm>. This provision must be included in all sub-contracts or sub-agreements entered into under this Contract.

APPENDIX I: FORMATS OF PERFORMANCE SECURITY

PERFORMANCE BANK GUARANTEE

To:.....

[INSERT FULL NAME AND ADDRESS OF RR or BUREAU/DIVISION DIRECTOR AT UNFPA]

WHEREAS.....[INSERT NAME AND ADDRESS OF THE CONTRACTOR] (hereinafter called "the Contractor") has undertaken, in pursuance of Contract No....., dated....., to execute.....[INSERT TITLE OF CONTRACT AND BRIEF DESCRIPTION OF WORKS], (hereinafter called "the Contract");

AND WHEREAS it has been stipulated by you in the said Contract that the Contractor shall furnish you with a Bank Guarantee by a recognized Bank for the sum specified therein as security for compliance with his obligations in accordance with the Contract;

AND WHEREAS we have agreed to give the Contractor such a Bank Guarantee;

NOW THEREFORE we hereby irrevocably affirm that we are the Guarantor and responsible to you, on behalf of the Contractor, up to a total of.....[INSERT AMOUNT OF GUARANTEE IN FIGURES AND IN WORDS], such sum being payable in the types and proportions of currencies in which the Contract Price is payable, and we undertake to pay you, upon your first written demand and without cavil or argument, any sum or sums within the limits of[INSERT AMOUNT OF GUARANTEE] as aforesaid without your needing to prove or to show grounds or reasons for your demand for the sum specified therein.

We hereby waive the necessity of your demanding the said debt from the Contractor before presenting us with the demand.

We further agree that no change or addition to or other modification of the terms of the Contract or of the Works to be performed thereunder or of any of the Contract Documents which may be made between you and the Contractor shall in any way release us from any liability under this guarantee, and we hereby waive notice of any such change, addition or modification.

This guarantee shall be valid until twenty eight calendar days after issuance of the Certificate of Final Completion.

SIGNATURE AND SEAL OF THE GUARANTOR
.....

NAME OF BANK

ADDRESS

DATE

PERFORMANCE BOND

By this Bond[INSERT NAME AND ADDRESS OF THE CONTRACTOR] as Principal (hereinafter called "the Contractor") and[INSERT NAME, LEGAL TITLE AND ADDRESS OF SURETY, BONDING COMPANY OR INSURANCE COMPANY] as Surety (hereinafter called "the Surety") are held and firmly bound unto[INSERT NAME AND ADDRESS OF UNFPA] as Obligee (hereinafter called "the UNFPA") in the amount of.[INSERT AMOUNT OF BOND IN FIGURES AND IN WORDS], for the payment of which sum well and truly to be made in the types and proportions of currencies in which the Contract Price is payable, the Contractor and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS the Contractor has entered into a contract with the UNFPA dated for [INSERT TITLE OF CONTRACT AND BRIEF DESCRIPTION OF THE WORKS] in accordance with the documents, plans, specifications and amendments thereto, which to the extent herein provided for, are by reference made part hereof and are hereinafter referred to as the Contract.

NOW, THEREFORE, the Condition of this Obligation is such that, if the Contractor shall promptly and faithfully perform the said Contract (including any amendments thereto) then this obligation shall be null and void; otherwise it shall remain in full force and effect. Whenever the Contractor shall be , and declared by the UNFPA to be, in default under the Contract, the UNFPA having performed the UNFPA's obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) complete the Contract in accordance with its terms and conditions; or
- (2) obtain a bid or bids from qualified Bidders for submission to the UNFPA for completing the Contract in accordance with its terms and conditions, and upon determination by the UNFPA and the Surety of the lowest responsible Bidder, arrange for a Contract between such Bidder and UNFPA and make available as work progresses (even though there should be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the Balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term " Balance of the Contract Price", as used in this paragraph, shall mean the total amount payable by UNFPA to Contractor under the Contract, less the amount properly paid by UNFPA to Contractor; or
- (3) pay the UNFPA the amount required by UNFPA to complete the Contract in accordance with its terms and conditions up to a total not exceeding the amount of this Bond.

The Surety shall not be liable for a greater sum than the specified penalty of this Bond.

No right of action shall accrue on this Bond to or for the use of any person or corporation other than the UNFPA named herein or the heirs, executors, administrators, successors and assigns of the UNFPA.

In testimony whereof, the Contractor has hereunto set his hand and affixed his seal, and the Surety has caused these presents to be sealed with his corporate seal duly attested by the signature of his legal representative, this.....day of.....2000

SIGNED ON:

SIGNED ON:

ON BEHALF OF:

ON BEHALF OF:

NAME &TITLE:

NAME &TITLE:

ANNEX II

TECHNICAL SPECIFICATIONS AND DRAWINGS