

## GENERAL CONDITIONS OF CONTRACT FOR THE PROVISION OF GOODS AND SERVICES

**1. LEGAL STATUS:** The Contractor shall have the legal status of an independent contractor vis-à-vis WIPO, and nothing contained in the Contract shall be construed as establishing between the Parties the relationship of employer and employee, of principal and agent, or of a legal partnership. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of its engagement of such persons or entities.

**2. ASSIGNMENT:** The Contractor shall not assign, transfer, pledge, or make any other disposition of the Contract, of any part thereof, or of any of the rights, claims or obligations under the Contract, except with the prior written authorization of WIPO.

**3. SUBCONTRACTING:** In the event that the Contractor requires the services of subcontractors to perform obligations under the Contract, the Contractor shall obtain the prior written approval of WIPO. WIPO shall be entitled, in its sole discretion, to review the qualifications of subcontractors and to reject, without affecting any of WIPO's rights under the Contract, a proposed subcontractor that WIPO reasonably considers is not qualified to perform obligations under the Contract. The Contractor shall be solely responsible for all services and obligations performed by the subcontractors. The terms of a subcontract shall conform with the provisions of this Contract.

**4. PURCHASE OF GOODS:** If goods are purchased, the following shall apply:

**ACCEPTANCE OF GOODS:** WIPO shall have a reasonable opportunity to inspect the goods following delivery before it accepts any goods. Delivery of the goods or payment by WIPO shall not be deemed in itself acceptance of the goods by WIPO.

**REJECTION OF GOODS:** Notwithstanding any other rights of, or remedies available to WIPO, in case any of the goods are defective or otherwise do not conform to the requirements of the Contract, WIPO may reject the goods, and the Contractor shall promptly and at its own expense, at the option of WIPO: (i) provide a refund upon return of the goods by WIPO; or, (ii) repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; or, (iii) replace the goods with goods of equal or better quality; and, (iv) pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to WIPO.

**WARRANTIES:** The Contractor warrants and represents that: (i) the goods, including all packing thereof, conform to the quality, quantity, description and other specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be free from faults and defects in design, material, manufacturer and workmanship; (ii) if the Contractor is not the original manufacturer of the goods, the Contractor shall provide WIPO with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract; (iii) the goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, such as patents, copyrights, trademarks and industrial designs, and unencumbered by any third party's title or other property rights, including any liens or security interests; and, (iv) the goods are new and unused. All warranties will remain fully valid following any delivery of the goods and for a period of not less than one year following acceptance of the goods by WIPO in accordance with the Contract. During any period in which the Contractor's warranties are effective, upon notice by WIPO that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse WIPO for the purchase price paid for the defective goods.

**TRANSPORTATION AND FREIGHT:** Unless otherwise specified in the Contract, the Contractor shall be solely responsible for making all transport arrangements and for payment of freight and appropriate insurance for the shipment and delivery of the goods to their final destination. The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods.

**PASSING OF TITLE:** Title in the goods shall pass from the Contractor to WIPO upon delivery of the goods and their acceptance by WIPO in accordance with the requirements of the Contract.

**RISK OF LOSS:** Unless otherwise stated in the Contract, the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until the physical delivery of the goods to WIPO in accordance with the terms of the Contract.

**5. ACQUISITION OF SERVICES:** To the extent that the Contract involves the acquisition of services, the following shall apply:

**RESPONSIBILITY FOR PERSONNEL:** The Contractor shall supervise and be responsible and liable for all services performed by its employees, agents, servants, representatives and sub-contractors (or any of their employees, agents, servants, representatives and sub-contractors) ("Personnel") and for their compliance with the terms and conditions of this Contract. The Contractor shall ensure that all Personnel performing services under this Contract are qualified, reliable, competent, properly trained, and conform to the highest standards of ethical conduct.

The Contractor shall be fully responsible and liable for any action, omission, negligence or misconduct of the Contractor's Personnel.

The Contractor shall be responsible for any costs or claims associated with any illness, injury, death or disability of the Contractor's Personnel. The Contractor shall ensure that all of its Personnel used to perform obligations in connection with this Contract are adequately covered by insurance for any service related illness, injury, death or disability. WIPO accepts no responsibility for providing any corresponding insurance coverage.

**PERFORMANCE OF SERVICES:** The Contractor and its Personnel shall perform the services under this Contract with the necessary care and diligence, and in accordance with the highest professional standards expected from professionals providing similar services in a similar industry. Except as expressly provided in this Contract, the Contractor shall be responsible at its sole cost for providing all the necessary personnel, facilities, equipment, material, and supplies and for making all arrangements necessary for the performance of the services under this Contract.

**ACCEPTANCE OF SERVICES:** WIPO reserves the right to review and inspect all services performed by the Contractor at all reasonable places and times. Payments effected by WIPO to the Contractor shall not relieve the Contractor of its obligations under this Contract and shall not be deemed to be acceptance by WIPO of the Contractor's performance.

**REJECTION OF SERVICES:** If any services performed by the Contractor do not conform to the requirements of this Contract, without prejudice to any of WIPO's other rights and remedies, WIPO shall have the following options: (i) if WIPO determines that the improper performance can be remedied by way of re-performance or other corrective measures by the Contractor, WIPO may request the Contractor to take, and the Contractor shall take, at no cost or expense to WIPO, the measures necessary to re-perform or take other appropriate actions to remedy the improperly performed services within a reasonable time specified by WIPO; (ii) if the Contractor does not promptly take corrective measures or if WIPO reasonably determines that the Contractor is unable to remedy the improper performance in a timely manner, WIPO may obtain the assistance of other entities or persons and have corrective measures taken at the expense of the Contractor.

**6. NON-EXCLUSIVITY:** Unless otherwise specified in the Contract, there shall be no limitation for WIPO to obtain goods or services of the same kind as described in the Contract from another source.

**7. INTELLECTUAL PROPERTY:** All intellectual property and other proprietary rights, including patents, copyrights, industrial designs and trademarks, with regard to products, inventions, know-how, documents or other materials which the Contractor has developed under the contract shall be the sole property of WIPO. The Contractor acknowledges and agrees that such products and other materials constitute 'works made for hire' for WIPO.

**8. CONFIDENTIALITY: CONFIDENTIAL INFORMATION:** All information, including data, knowledge, know-how, works and ideas, that is disclosed to the Contractor orally, visually, by document, electronic mail, computer disks or in any other manner, whether directly or indirectly, or that the Contractor learns about, discovers, develops or creates in connection with the goods sold or services provided to WIPO ("Confidential Information") shall be held in confidence by the Contractor in accordance with this article. Confidential Information shall not include any information for which the Contractor can establish that it (i) was previously known by the Contractor at the time of disclosure by WIPO, without any obligation of confidentiality; (ii) is or becomes publicly available through authorized disclosure by WIPO and without any restrictions on use and disclosure; or, (iii) is approved for release by written authorization of WIPO.

**CONFIDENTIALITY OBLIGATIONS:** The Contractor agrees to (i) use the Confidential Information only in connection with the performance of the obligations towards WIPO, except as may otherwise be authorized by WIPO in writing; (ii) hold the Confidential Information in strict confidence, using the highest standard of care; and, (iii) immediately notify WIPO in the event of any unauthorized use or disclosure of the Confidential Information. The Contractor may disclose the Confidential Information (i) to another person with WIPO's prior written consent; (ii) to the Contractor's employees, representatives and agents who have a need to know the Confidential Information for purposes of performing the Contractor's obligations towards WIPO, who have been advised of the Contractor's obligations with respect to the Confidential Information, and with whom the Contractor has signed a written confidentiality agreement in content at least as protective as the provisions of this Contract prior to any disclosure of Confidential Information; or (iii) to the extent required by law, provided that the Contractor will give WIPO sufficient prior notice of a request for the disclosure of Confidential Information in order to allow WIPO to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. All documents and other tangible objects containing or representing Confidential Information and all copies thereof which are in the possession of the Contractor shall be and remain the property of WIPO and shall be promptly returned to WIPO upon request.

**TERM:** These confidentiality provisions shall survive until such time as all Confidential Information disclosed hereunder becomes publicly known and made generally available through no action or inaction of the Contractor.

**9. PUBLICITY, USE OF THE NAME OR EMBLEM OF WIPO:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage that the Contractor has a contractual relationship with WIPO and use the name or emblem of WIPO without the written permission of WIPO.

**10. TAX EXEMPTION: DIRECT TAXES AND CUSTOMS RESTRICTIONS, DUTIES, AND CHARGES:** In accordance with Article III, Section 9 of the Convention on the Privileges and Immunities of the Specialized Agencies of 1947, and Article 8 of the Headquarters Agreement between the Swiss Federal Council and WIPO of 1970, WIPO is exempt, in the signatory countries, from direct taxes, under the exclusion of charges for public utility services, and 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 WIPO from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with WIPO to determine a mutually acceptable procedure. The Contractor authorizes WIPO to deduct from the Contractor's invoices any amount representing such taxes, duties or charges, unless the Contractor has consulted with WIPO before the payment thereof and WIPO has, in each instance, specifically authorized the Contractor to pay such taxes, duties, or charges under written protest. In that event, WIPO shall reimburse the Contractor for any such expenses.

**VALUE ADDED TAX:** WIPO is exempt under Article 8 of the Headquarters Agreement between the Swiss Federal Council and WIPO of 1970 from the payment of VAT on acquisitions destined for official use and for services received in an official capacity, costing at least CHF 100 per invoice (including VAT) and provided in Switzerland. Upon request, WIPO will provide documentation for an application to the Swiss tax authorities for an exemption from VAT at the source.

**11. GENERAL LIABILITY:** The Contractor shall pay WIPO promptly for all loss or damage caused to WIPO by the Contractor, the Contractor's personnel, its subcontractors or anyone else directly or indirectly employed by the Contractor or its subcontractors in the performance of the Contract.

**12. INDEMNIFICATION FOR THIRD-PARTY CLAIMS:** The Contractor shall indemnify and defend WIPO, its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability brought by a third party against WIPO, including litigation costs, attorney's fees, settlement payments and damages, arising from (i) allegations or claims that the possession of or use by WIPO of a patented device, copyrighted material, or any other goods, property or services provided or licensed to WIPO under the terms of the Contract constitutes an infringement of a patent, copyright, trademark, or other intellectual property right of any third party; or, (ii) any acts or omissions of the Contractor, or of a subcontractor or anyone directly or indirectly employed by them in the performance of the Contract, which give

rise to legal liability to someone not a party to the Contract.

**13. INSURANCE:** 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: (i) insurance against all risks in respect of its property and the equipment used for the performance of the Contract; (ii) 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 other benefits required to be paid by law, in connection with the performance of the Contract; and, (iii) liability insurance in an adequate amount to cover all claims, including claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal injury, arising from or in connection with the Contractor's performance under the Contract, including liability arising out of or in connection with the acts or omissions of the Contractor's personnel, agents, invitees, subcontractors, or the use, during the performance of the Contract, of transportation vehicles. WIPO reserves the right, upon written notice to the Contractor, to obtain copies of the insurance policies required to be maintained by the Contractor under the Contract. The Contractor shall promptly notify WIPO concerning a cancellation or material change of insurance coverage required under the Contract.

**14. LICENSES, PERMITS, AND OTHER AUTHORIZATIONS:** The Contractor shall be responsible for obtaining, at its own cost, all licenses (including export licenses), permits and authorizations from governmental or other authorities necessary for the performance of this Contract.

**15. ENCUMBRANCES AND LIENS:** The Contractor shall not cause or permit any lien, attachment or other encumbrance against monies due to the Contractor or that may become due for work done or against goods supplied or materials furnished under the Contract.

**16. SOURCE OF INSTRUCTIONS:** The Contractor shall neither seek nor accept instructions from any authority external to WIPO in connection with the performance of its obligations under the Contract and perform them with the fullest regard to the interests of WIPO.

**17. OFFICIALS NOT TO BENEFIT:** The Contractor warrants that it has not and shall not offer to any representative, official, employee, or other agent of WIPO a direct or indirect benefit arising from or related to the performance of the Contract or of another contract with WIPO or the award thereof or for any other purpose intended to gain an advantage for the Contractor.

**18. OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract and, if agreed to under the UN or WIPO vendor registration process, the UN Supplier Code of Conduct.

**19. AUDITS AND INVESTIGATIONS:** Invoices paid by WIPO may be subject to a post-payment audit during and for a period of three years following the ending of the Contract. WIPO shall be entitled to a refund from the Contractor for amounts shown by such audits to have been paid other than in accordance with the terms of the Contract. WIPO may during the same time period also conduct investigations relating to any aspect of the Contract or the award thereof. The Contractor shall provide its full cooperation with any such audits or investigations. Such cooperation shall include access to the Contractor's premises, records, personnel, agents, and advisors related to the contract with WIPO.

**20. SET-OFF:** WIPO shall have the right, upon any amounts becoming due under this Contract to the Contractor, to set off, against such amounts payable by WIPO, any indebtedness or other claim owed by the Contractor to WIPO hereunder or under any other contract between the Parties.

**21. MODIFICATIONS:** No modification in the Contract shall be valid and enforceable against WIPO unless provided by a valid written amendment to the Contract signed by the Contractor and WIPO. Only the Procurement and Travel Division of WIPO possesses the authority to agree on behalf of WIPO to any modification of the Contract.

**22. FORCE MAJEURE:** Neither Party will be liable to the other Party for failure to perform its respective obligations, if such failure is a result of an unforeseeable and irresistible act of nature, any act of war, 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 Party affected. If the Contractor is rendered unable, wholly or in part, by reason of force majeure to perform its obligations under the Contract, WIPO shall have the right to terminate the Contract with a period of notice of seven days.

**23. TERMINATION: TERMINATION FOR CAUSE:** Either Party may terminate the Contract in whole or in part, in written form, with immediate effect if the other Party materially breaches the Contract, and an appropriate time period has been set to allow the breaching Party to cure the breach and was not complied with. No time period needs to be set where (i) it is evident from the conduct of the other Party that a time limit would serve no purpose; (ii) where performance has become pointless for WIPO as a result of the default; or, (iii) where the Contract makes it clear that WIPO intended performance to take place at or before a precise point in time and therefore time is of the essence.

**TERMINATION FOR CONVENIENCE:** WIPO may terminate the Contract without having to provide a justification therefor upon thirty days advance written notice to the Contractor, in which case WIPO shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to the receipt of the notice of termination.

**INSOLVENCY:** Should the Contractor become bankrupt or otherwise insolvent, WIPO may terminate this Contract with immediate effect. The Contractor shall immediately inform WIPO of the occurrence of any of such an event. Except as prohibited by law, the Contractor shall compensate WIPO for all damages and costs as a result of such events.

**CONSEQUENCES OF TERMINATION:** In the event of a termination of the Contract, the Contractor shall, except as directed otherwise by WIPO in writing: (i) take immediate steps to bring the performance of the obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum; (ii) refrain from undertaking any further or additional commitments under the Contract as of the date of receipt of such notice; and, (iii) deliver all completed or partially completed goods, works or other deliverables that, if the Contract had been completed, would be required to be furnished to WIPO thereunder. WIPO shall pay the Contractor on a pro rata basis for the goods delivered or work performed to the satisfaction of WIPO in accordance with the requirements of the Contract, and in case of a breach of contract by the Contractor, less an adjustment to reflect any diminution of value of the work for, or the damage caused to WIPO by such breach.

**GENERAL:** The provisions of this article are without prejudice to any other rights or remedies of WIPO under the Contract.

**24. NON-WAIVER OF RIGHTS:** The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any

purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

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

**26. SETTLEMENT OF DISPUTES AND APPLICABLE LAW:** The Parties shall use their best efforts to amicably settle any dispute arising out of the Contract. If not settled amicably within sixty days after receipt by one Party of the other Party's written request for such amicable settlement, the dispute may be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then in force. The appointing authority shall be the Secretary General of the Permanent Court of Arbitration. The place of arbitration shall be Geneva, Switzerland. The language to be used in the arbitral proceedings shall be English or French. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages and 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 such a dispute.

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

**28. MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor's subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.

**29. SEXUAL EXPLOITATION:**

29.1 The Contractor shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by the Contractor to perform any services under the Contract. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, the Contractor shall refrain from, and shall take all reasonable and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

29.2 The United Nations shall not apply the foregoing standard relating to age in any case in which the Contractor's personnel or any other person who may be engaged by the Contractor to perform any services under the Contract is married to the person less than the age of eighteen years with whom sexual activity has occurred and in which such marriage is recognized as valid under the laws of the country of citizenship of such Contractor's personnel or such other person who may be engaged by the Contractor to perform any services under the Contract.

**30. PRIVILEGES AND IMMUNITIES:** Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of WIPO.