

**ANNEX II**  
**General Terms and Conditions of Individual Consultant Contracts**

**United Nations Population Fund**  
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**1. Legal Status:** The individual consultant (the “Contractor”) shall have the legal status of an independent contractor vis-à-vis the United Nations Population Fund (“UNFPA”), and shall not be regarded, for any purposes, as being either a “staff member” of UNFPA or the United Nations, under the United Nations Staff Regulations and Rules, or an “official” of the United Nations, for purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. Accordingly, nothing within or relating to the Individual Consultant Contract (the “Contract”) shall establish the relationship of employer and employee, or of principal and agent, between the United Nations and the Contractor. The officials, representatives, employees or subcontractors of UNFPA and of the Contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and UNFPA and the Contractor shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

**2. Standards of Conduct: In General:** The Contractor shall neither seek nor accept instructions from any authority external to UNFPA in connection with the performance of its obligations under the Contract. Should any authority external to UNFPA seek to impose any instructions on the Contractor regarding the Contractor’s performance under the Contract, the Contractor shall promptly notify UNFPA and shall provide all reasonable assistance required by UNFPA. The Contractor shall not take any action in respect of its performance of the Contract or otherwise related to its obligations under the Contract that may adversely affect the interests of UNFPA, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of UNFPA and the United Nations. The Contractor warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, employee or other agent of UNFPA. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of its obligations under the Contract.

*Prohibition of Sexual Exploitation and Abuse:* In the performance of the Contract, the Contractor shall comply with the standards of conduct set forth in the Secretary-General’s bulletin ST/SGB/2003/13 of 9 October 2003, concerning “Special measures for protection from sexual exploitation and sexual abuse”. In particular, the Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

In the performance of the Contract, the Contractor shall comply with the regulations set forth in ST/SGB/2002/9 entitled “Regulations Governing the Status, basic Rights and Duties of Officials other than Secretariat Officials, and Experts on Mission”.

The Contractor shall not engage in any corrupt, fraudulent, collusive, coercive, obstructive or unethical practices. The Contractor agrees to bring allegations of corrupt, fraudulent, collusive, coercive, obstructive or unethical practices arising in relation to this Agreement, of which IP has been informed or has otherwise become aware, promptly to the attention of the Director, Office of Audit and Investigation Services, UNFPA. For purposes of this Contract, the following definitions shall apply:

- (i) “corrupt practice” means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party;
- (ii) “fraudulent practice” means any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit, or to avoid an obligation;
- (iii) “collusive practice” means an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
- (iv) “coercive practice” means impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
- (v) “obstructive practice” means acts or omissions intended to materially impede the exercise of contractual rights of audit, investigation and access to information, including destruction, falsification, alteration or concealment of evidence material to an investigation into allegations of fraud and corruption;
- (vi) “unethical practice” means the conduct or behaviour that is contrary to staff or supplier codes of conduct, such as those relating to conflict of interest, gifts and hospitality, post-employment provisions, abuse of authority and harassment.

The Contractor acknowledges and agrees that any breach of any of the provisions hereof shall constitute a breach of an essential term of the Contract, and, in addition to any other legal rights or remedies available to any person, shall give rise to grounds for termination of the Contract. In addition, nothing herein shall limit the right of UNFPA to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

**3. Title Rights, Copyrights, Patents and other Proprietary Rights:** Title to any equipment and supplies that may be furnished by UNFPA to the Contractor for the performance of any obligations under the Contract shall rest with UNFPA, and any such equipment shall be returned to UNFPA at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to UNFPA, shall be in the same condition as when delivered to the Contractor, subject to normal wear

and tear, and the Contractor shall be liable to compensate UNFPA for any damage or degradation of the equipment that is beyond normal wear and tear.

UNFPA shall be entitled to all intellectual property and other proprietary rights, including, but not limited to, patents, copyrights and trademarks, with regard to products, processes, inventions, ideas, know-how or documents and other materials which the Contractor has developed for UNFPA under the Contract and which bear a direct relation to or are produced or prepared or collected in consequence of, or during the course of, the performance of the Contract, and the Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for UNFPA. However, to the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (a) that pre-existed the performance by the Contractor of its obligations under the Contract, or (b) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, UNFPA does not and shall not claim any ownership interest thereto, and the Contractor grants to UNFPA a perpetual license to use such intellectual property or other proprietary right solely for the purposes of and in accordance with the requirements of the Contract. At the request of UNFPA, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to UNFPA in compliance with the requirements of the applicable law and of the Contract. Subject to the foregoing provisions, all maps, drawings, photographs, mosaics, plans, reports, estimates, recommendations, documents and all other data compiled by or received by the Contractor under the Contract shall be the property of UNFPA, shall be made available for use or inspection by UNFPA at reasonable times and in reasonable places, shall be treated as confidential and shall be delivered only to UNFPA authorized officials on completion of work under the Contract.

4. Confidential Nature of Documents and Information: Information and data that are considered proprietary by either UNFPA or the Contractor or that are delivered or disclosed by one of them ("Discloser") to the other ("Recipient") during the course of performance of the Contract, and that are designated as confidential ("Information"), shall be held in confidence and shall be handled as follows. The Recipient of such Information shall use the same care and discretion to avoid disclosure, publication or dissemination of the Discloser's Information as it uses with its own similar information that it does not wish to disclose, publish or disseminate, and the Recipient may otherwise use the Discloser's Information solely for the purpose for which it was disclosed. The Recipient may disclose confidential Information to any other party with the Discloser's prior written consent, as well as to the Recipient's employees, officials, representatives and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Contract. Subject to and without any waiver of the privileges and immunities of the United Nations, including its subsidiary organs such as UNFPA, the Contractor may disclose Information to the extent required by law, provided that the Contractor will give UNFPA sufficient prior notice of a request for the disclosure of Information in order to allow UNFPA to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. UNFPA may disclose Information to the extent as required pursuant to the Charter of the United Nations, resolutions or regulations of the General Assembly, or rules promulgated by the Secretary-General. The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder. These obligations and restrictions of confidentiality shall be effective during the term of the Contract, including any extension thereof, and, unless otherwise provided in the Contract, shall remain effective following any termination of the Contract.

5. Travel, Medical Clearance and Service-incurred Death, Injury or Illness: If the Contractor is required by UNFPA to travel beyond commuting distance from the Contractor's usual place of residence, such travel shall be at the expense of UNFPA and shall be governed by conditions established by UNFPA. Such travel shall be at the least costly airfare structure regularly available or its equivalent when by air.

UNFPA may require the Contractor to submit a statement of good health from a recognized physician prior to commencement of work in any offices or premises of UNFPA or before engaging in any travel required by UNFPA or connected with the performance of the Contract. The Contractor shall provide such a statement of good health as soon as practicable following such request, and prior to engaging in any such travel, and the Contractor warrants the accuracy of any such statement, including, but not limited to, confirmation that the Contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

In the event of the death, injury or illness of the Contractor which is attributable to the performance of services on behalf of UNFPA under the terms of the Contract while the Contractor is traveling at UNFPA expense or is performing any services under the Contract in any offices or premises of UNFPA, the Contractor or the Contractor's dependents, as appropriate, shall be entitled to compensation equivalent to that provided under appendix D to the United Nations Staff Rules.

6. Prohibition on Assignment; Modifications: The Contractor may not assign, delegate, 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 UNFPA, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licenses or other forms of agreement concerning any goods or services to be provided under the

Contract shall not be valid and enforceable against UNFPA nor in any way shall constitute an agreement by UNFPA thereto, unless any such undertakings, licenses or other forms of agreement are the subject of a valid written undertaking by UNFPA. No modification or change in the Contract shall be valid and enforceable against UNFPA unless provided by means of a valid written amendment to the Contract signed by the Contractor and an authorized official or appropriate contracting authority of UNFPA.

7. Subcontractors: In the event that the Contractor requires the services of subcontractors to perform any obligations under the Contract, the Contractor shall obtain the prior written approval of UNFPA for any such subcontractors. The United Nations may, in its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefor, and such rejection shall not entitle the Contractor to claim any delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract. The Contractor shall be solely responsible for all services and obligations performed by its subcontractors. The terms of any subcontract shall be subject to, and shall be construed in a manner that is fully in accordance with, all of the terms and conditions of the Contract.

8. Use of Name, Emblem, Official Seal or Logo of the United Nations or UNFPA: The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with UNFPA, nor shall the Contractor, in any manner whatsoever, use the name, emblem or official seal of the United Nations, or any abbreviation of the name of the United Nations, or the name or logo of UNFPA in connection with its business or otherwise without the written permission of UNFPA or the United Nations, as applicable.

9. Indemnification: The Contractor shall indemnify, defend, and hold and save harmless UNFPA, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to: (a) allegations or claims that the use by UNFPA of any patented device, any copyrighted material or any other goods or services provided to UNFPA for its use under the terms of the Contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or (b) 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.

10. Insurance: The Contractor shall pay UNFPA promptly for all loss, destruction or damage to the property of UNFPA caused by the Contractor, or of any subcontractor, or anyone directly or indirectly employed by them in the performance of the Contract. The Contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of its obligations under the Contract, as well as for arranging, at the Contractor's sole expense, such life, health and other forms of insurance as the Contractor may consider to be appropriate to cover the period during which the Contractor provides services under the Contract. The Contractor acknowledges and agrees that none of the insurance arrangements the Contractor may make shall, in any way, be construed to limit the Contractor's liability arising under or relating to the Contract.

11. Encumbrances and Liens: The Contractor shall not cause or permit any lien, attachment or other encumbrance by any person to be placed on file or to remain on file in any public office or on file with UNFPA against any monies due to the Contractor or to become due for any work done or against any goods supplied or materials furnished under the Contract, or by reason of any other claim or demand against the Contractor.

12. Force Majeure; Other Changes in Conditions: In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, the Contractor shall give notice and full particulars in writing to UNFPA of such occurrence or cause if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under the Contract. The Contractor shall also notify UNFPA of any other changes in conditions 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 conditions or occurrence, the Contractor shall also submit a statement to the United Nations of estimated expenditures that will likely be incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, UNFPA shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform any obligations under the Contract.

If the Contractor is rendered permanently 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 below, under "Termination", except that the period of notice shall be five (5) days instead of any other period of notice. In any case, UNFPA shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in the case of the Contractor's suffering any period of suspension in excess of thirty (30) 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, 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 or for any areas in which UNFPA is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delay 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.

13. Termination: Either party may terminate the Contract without having to provide any justification therefor upon giving written notice to the other party. The period of notice shall be five (5) calendar days. 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, applies for 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 his or her 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 financial condition that threatens to endanger or otherwise substantially affect the ability of the Contractor to perform any of the obligations under the Contract.

In the event of any termination of the Contract, upon receipt by the Contractor of notice of termination 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 bring the performance of any obligations under the Contract to a close in a prompt and orderly manner, and in doing so, reduce expenses to a minimum; (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice; (c) 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; (d) complete performance of the work not terminated; and (e) take any other action that may be necessary, or that UNFPA may direct in writing, 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.

In the event of any termination of the Contract, UNFPA shall only be liable to pay the Contractor compensation on a *pro rata* basis for no more than the actual amount of work performed to the satisfaction of UNFPA in accordance with the requirements of the Contract. Additional costs incurred by UNFPA resulting from the termination of the Contract by the Contractor may be withheld from any amount otherwise due to the Contractor from UNFPA.

14. Non-exclusivity: UNFPA shall have no obligation respecting, and no limitations on, its right to obtain goods of the same kind, quality and quantity, or to obtain any services of the kind described in the Contract, from any other source at any time.

15. Taxation: 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 the United Nations, including its subsidiary organs, such as UNFPA, from such taxes, restrictions, duties or charges, the Contractor shall immediately consult with UNFPA to determine a mutually acceptable procedure. UNFPA shall have no liability for taxes, duties or other similar charges payable by the Contractor in respect of any amounts paid to the Contractor under this Contract, and the Contractor acknowledges that UNFPA will not issue any statements of earnings to the Contractor in respect of any such payments.

16. Settlement of Disputes: Amicable Settlement: UNFPA and the Contractor 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.

Arbitration: Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties 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. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. 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 of Protection”) and Article 34 (“Form and Effect of the Award”) of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the 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.

17. Limitation on Actions: Except with respect to any indemnification obligations in Article 9, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 16, above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued. The Parties further acknowledge and agree that, for these purposes, a cause of action shall accrue when the breach actually occurs, or, in the case of latent defects, when the injured Party knew or should have known all of the essential elements of the cause of action, or in the case of a breach of warranty, when tender of delivery is made, except that, if a warranty extends to future performance of the goods or any process or system and the discovery of the breach consequently must await the time when such goods or other process or system is ready to perform in accordance with the requirements of the Contract, the cause of action accrues when such time of future performance actually begins.

18. Privileges and Immunities: Nothing in or relating to the Contract shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNFPA.

19. Two or more Currencies: Where two or more currencies are involved, the rate of exchange shall be the United Nations Operational Rate of Exchange on the date UNFPA instructs that payment(s) be effected.

20. Certification of Payment: Any fee payable under this Contract shall be payable only upon certification by UNFPA that Services were satisfactorily performed. For payment of fees in installments, certification by UNFPA that Services were satisfactorily performed is required at each phase. Certification shall be done using such form and format decided by UNFPA. The Contractor may not forward any certification of payment form to the UNFPA finance officer to obtain payment.

21. Electronically scanned copies of signed originals: Electronically scanned copies (e.g. “.pdf”) of the signed originals of this Contract shall have the same force and effect as the signed originals thereof.

22. 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 by other authorized and qualified agents of UNFPA at any time during the term of the Contract and for a period of two (2) years following the expiration or prior termination of the Contract. The Contractor further acknowledges and agrees that UNFPA may conduct investigations, at such times as determined solely by UNFPA, relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor relating to performance of this Contract. The right of UNFPA to conduct investigations and the Contractor’s obligation to cooperate with such investigations shall not lapse upon expiration or prior termination of the Contract. The Contractor shall provide its full and timely cooperation with any such post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor’s obligation to make available any relevant documentation for such purposes at reasonable times and on reasonable conditions. The Contractor shall require its employees, subcontractors and agents, if any, including but not limited to the Contractor’s attorneys, accountants or other advisers, to reasonably cooperate with any post-payment audits or investigations carried out by UNFPA hereunder. UNFPA shall be entitled to a refund from the Contractor for any amounts shown by such audits or investigations to have been paid by UNFPA or used by the Contractor other than in accordance with the terms and conditions of the Contract, including for any amounts paid by UNFPA or used by the Contractor as a result of the Contractor or any of its employees, subcontractors and agents having engaged in any corrupt, fraudulent, collusive, coercive, obstructive or unethical practice (as such terms are defined in Article 2). Such amount may be deducted by UNFPA from any payment due to the Contractor under the Contract.