

22 March 2022

**UNFPA SERVICE CONDITIONS FOR THE PROCUREMENT OF SUPPLIES AND SERVICES THROUGH WAMBO.ORG/THE POOLED PROCUREMENT MECHANISM BY UNFPA AT THE REQUEST AND ON BEHALF OF NON-GRANT FUNDED ELIGIBLE BUYERS**

**1. DEFINITIONS**

“Agreement” means the agreement between the Global Fund and UNFPA on the Procurement of Health Supplies by UNFPA at the Request and on Behalf of the Global Fund’s Eligible Buyers under the Global Fund’s Pooled Procurement Mechanism;

“Customer” means a Non-Grant Funded Eligible Buyer requesting UNFPA to provide Procurement Services in accordance with these Service Conditions;

“Non-Grant Funded Eligible Buyer” means a Principal Recipient or any other government or non-governmental organization using funds other than Global Fund grant funds;

“UNFPA” means the United Nations Population Fund, a subsidiary organ of the United Nations established by the United Nations General Assembly pursuant to resolution 3019 (xxvii) of 18 December 1972;

“Global Fund” means the Global Fund to Fight AIDS, Tuberculosis and Malaria;

“Parties” means the Customer and UNFPA jointly, and “Party” means either the Customer or UNFPA separately;

“Catalogue” means UNFPA’s catalogue of Supplies that fall within the scope of the Agreement. The Catalogue may be accessed on [wambo.org](http://wambo.org) and at <http://www.unfpaprocurement.org/products> or at such other URL as from time to time decided by UNFPA;

“Procurement Services” means the services provided by UNFPA to the Customer in accordance with the Agreement and these Service Conditions, including the procurement by UNFPA of the Supplies and Services, shipment, insurance and testing (as applicable) of the Supplies;

“Purchase Requisition” means the non-binding document from the Customer to UNFPA, requesting that UNFPA procure certain supplies and services on the Customer’s behalf;

“Cost Estimate” means the non-binding document from UNFPA to the Customer, which includes a preliminary estimate of the cost for procuring certain supplies and services;

“Price Quote Form” means the document issued by UNFPA in [wambo.org](http://wambo.org) in response to the Customer’s Purchase Requisition, setting out inter alia: the Supplies, Services, and relevant quantities, to be procured by UNFPA on behalf of the Customer; the Total Amount Payable; and the Price Quote Form Validity Period;

“Total Amount Payable” means the amount to be paid by the Customer to UNFPA in advance of the Procurement Services, as set out in the Price Quote Form, which includes the cost of the Supplies, Services, and the Handling Fee, and may include the cost of any testing, shipment, insurance, a Contingency, as well as other costs;

“Validity Period” means the period of time stipulated in the Price Quote Form for which the Price Quote Form is valid; the Validity Period will normally be sixty (60) days;

“e-PO” means the document issued in wambo.org to UNFPA upon the Customer’s acceptance of the UNFPA’s Price Quote Form and these Service Conditions;

“Handling Fee” means the separately identified amount to defray UNFPA’s costs associated with handling and processing the Procurement Services;

“Contingency” means a separately identified amount that may be included in the Price Quote Form and, if so included, may be used by UNFPA as a contingency, as further provided in these Service Conditions;

“Supplies” means supplies, equipment, commodities and material related to UNFPA activities, consistent with the aims and policies of UNFPA, and included in the Price Quote Form;

“Services” means services related to UNFPA activities, consistent with the aims and policies of UNFPA, and included in the Price Quote Form;

“Supplier” means the third party supplier of the Supplies or Services, contracted by UNFPA;

“Service Conditions” means these terms and conditions for the procurement of Supplies and Services through wambo.org by Non-Grant Funded Eligible Buyers and any additional terms and conditions and disclaimers issued with the Price Quote Form, which shall constitute an integral part of the Procurement Services Contract (as such term is defined in clause 4.4, below);

“wambo.org” means an online purchasing platform developed by Global Fund for *inter alia* Non-Grant Funded Eligible Buyers;

“force majeure” means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar force or nature, provided that such acts arise from causes beyond the control and without the fault or negligence of the Party concerned.

“Internationally Accredited Laboratories” means laboratories that are ISO 17025-accredited or World Health Organization (“WHO”) pre-qualified for testing of the Supplies in question.

## **2. RESTRICTIONS OF SERVICE**

2.1 UNFPA and the Customer shall have the status of independent contractors vis-à-vis each other. Nothing contained in or relating to these Service Conditions shall be construed as establishing or creating a partnership, or of creating a relationship of principal and agent, between UNFPA and the Customer.

2.2 The Parties recall that pursuant to UNFPA Financial Regulation 2.2 T (i), UNFPA may conduct “procurement ... with no direct UNFPA programme component, at the request and on behalf of third parties (Governments, United Nations Specialized Agencies, intergovernmental organizations, non-governmental organizations, or United Nations entities, including funds, programmes, and subsidiary organs of the United Nations).” In accordance with UNFPA Financial Regulation 15.3, “[s]uch procurement will ... a) be for purposes related to the UNFPA mandate and will be consistent with the aims and policies of UNFPA; b) in each case, be specified in a procurement services contract;

c) be undertaken on the basis of full payment in advance of the total cost of the procurement ...; and  
d) include a separately identified handling fee ....” In consideration of UNFPA’s status and mandate, the Customer undertakes to ensure that any Supplies or Services procured by UNFPA on behalf and at the request of the Customer hereunder, will not be used by the Customer or any third party for any profit making, business or similar concern. This shall not preclude the resale of any Supplies by the Customer for purposes not primarily related to the commercial generation of profit, including but not limited to purposes involving social or subsidized marketing of Supplies on the basis of public or development policy.

2.3 UNFPA reserves the right, at its sole discretion, to refuse to respond to any Purchase Requisition in respect of supplies or services.

2.4 Procurement Services provided by UNFPA hereunder are subject to the availability of the Supplies and Services.

### 3. Purchase Requisition

3.1 The Customer will issue a Purchase Requisition in wambo.org for supplies and services to UNFPA.

3.2 UNFPA may issue a Cost Estimate to the Customer for supplies and services.

3.3 The Customer may create a Purchase Requisition in wambo.org by choosing from the Catalogue or by requesting descriptions and specifications not included in the Catalogue. The Purchase Requisition created by the Customer in wambo.org and the Cost Estimate, if any, shall not give rise to any rights and obligations on the part of either Party.

## 4. THE CONTRACT BETWEEN UNFPA AND CUSTOMER FOR PROCUREMENT SERVICES

4.1 The Price Quote Form, issued by UNFPA in wambo.org to the Customer in response to the Customer’s Purchase Requisition, will constitute the offer from UNFPA to the Customer for the performance of the Procurement Services. The Price Quote Form shall be binding upon UNFPA only during the Validity Period.

4.2 The Customer will confirm its acceptance of the Price Quote Form by accepting the terms of the Purchase Requisition in wambo.org, updated to include the information of the Price Quote Form. By accepting the Price Quote Form, the Customer agrees that it shall be solely responsible to ensure that the Supplies and Services satisfy any requirements under applicable laws or regulations (including for their importation, (product) registration, packaging and use), as well as any requirements under applicable government policies, including those related to public health and development. Without prejudice to the foregoing, UNFPA will undertake its best efforts to select a manufacturer or Supplier whose items will be registered in the respective country on the target delivery date.

4.3 Subject to any further controls by the Global Fund as may apply, the Customer’s acceptance of UNFPA’s Price Quote Form will result in the issuance, through wambo.org of an e-PO to UNFPA.

4.4 The e-PO, which is generated in accordance with article 4.3 above upon the Customer’s acceptance of UNFPA’s Price Quote Form, together with these Service Conditions, shall constitute the contract between the Parties for the Procurement Services (hereinafter the “Procurement Services Contract”).

4.5 If the Customer recognizes electronic approvals as legally binding, the electronically signed or approved Price Quote Forms and e-POs in wambo.org shall have the same force and effect as an

original, signed Price Quote Form and e-PO. If the Customer does not recognize electronic approvals as legally binding, the e-PO will include the printed version of the Price Quote Form generated by wambo.org in PDF format, countersigned by the Customer during the Validity Period as its consent to be bound by the Procurement Services Contract.

## **5. PAYMENT**

5.1 Upon issuance of the e-PO, the Customer shall pay the Total Amount Payable into the bank account indicated for that purpose in wambo.org, in a manner that it is received within the Validity Period (hereinafter the “Payment”).

5.2 The Payment will be received and administered by UNFPA in accordance with UNFPA’s financial regulations, rules and procedures.

5.3 Consistent with the principle contained in UNFPA Financial Regulation 15.3 that UNFPA’s Procurement Services are provided on the basis of full payment in advance of the procurement activities to cover all costs, the Customer consents to the use by UNFPA of the Contingency against any unforeseen costs, expenses, or increases in costs, including but not limited to shipment or transportation surcharges, or any other liability, arising as a result of or in connection with the Procurement Services.

## **6. RECEIPT OF E-PO OR OF PAYMENT AFTER VALIDITY PERIOD**

6.1 In the event that the duly executed Purchase Order or the Payment, or both, are received by UNFPA after the expiration of the Validity Period, UNFPA at its sole discretion, may proceed as follows:

6.1.1 UNFPA may request a revision of the e-PO in wambo.org, issuing a new Price Quote Form and sending it to the Global Fund. The Global Fund will then get in touch with the Customer who may confirm acceptance of the new Price Quote Form by signing the updated Price Quote Form and sending it back to the Global Fund. The Global Fund will then issue an e-PO revision in wambo.org within the new Validity Period. In that case, the new e-PO issued in response to the Customer’s acceptance of UNFPA’s revised Price Quote Form, together with these Service Conditions, shall then constitute the new Procurement Services Contract within the meaning of clause 4.4. In the event that the new Price Quote Form is subject to an increase in the Total Amount Payable, the Customer shall pay the balance between the previous Payment and the Total Amount Payable included in the new Price Quote Form, which must be received by UNFPA within the Validity Period stated in the new Price Quote Form. (If the revised e-PO is not issued within the new Validity Period, or if the Customer does not pay the balance, if any, between the Customer’s previous Payment and the Total Amount Payable included in the new Price Quote Form during the new Validity Period, then UNFPA may proceed in accordance with clause 6.1.3.);

6.1.2 UNFPA may, in writing, excuse the lateness of the Purchase Order or the Payment. In that case, the Parties will proceed with the implementation of the Procurement Services Contract; or

6.1.3 UNFPA may decide to take no further action in respect of the Procurement Services. In that case, UNFPA will inform via email sent to the Global Fund, and the Global Fund will cancel the e-PO in wambo.org, informing the Customer of the process. In this case, any Payment received by UNFPA will be returned to the Customer in accordance with the Customer’s instructions, less any bank fees incurred by UNFPA.

## **7. CHANGES TO E-PO**

7.1 Once the Customer has accepted the Price Quote Form and the e-PO has been issued to UNFPA, the e-PO may still be modified with the involvement of the Global Fund teams and subject to the acceptance of any modification by UNFPA as follows:

7.1.1 If the Customer wishes to initiate the modification, the Global Fund or UNFPA will do so in wambo.org and the request for modification will follow the relevant Customer approval hierarchies. The Global Fund will review the request for modification and coordinate with UNFPA to ensure the change is possible and if so under which conditions (including, but not limited to, impacts on costs and timelines). It is understood that any such changes will not be accommodated by UNFPA should UNFPA have already started to act upon the e-PO. Once UNFPA has confirmed feasibility to accommodate the modification request, the Global Fund will release in wambo.org the e-PO revision request to UNFPA.

7.1.2 UNFPA can request modification of the e-PO. Changes may require a revised signed Price Quote Form from the Customer.

## **8. PROCUREMENT OF SUPPLIES AND SERVICES; SUPPLIES AVAILABLE IN UNFPA'S INVENTORY**

8.1 The Supplies and Services will be procured by UNFPA in accordance with UNFPA's regulations, rules and procedures relating to procurement.

8.2 Supplies and Services included in the Catalogue will be procured in accordance with and subject to the descriptions and specifications as provided for in the Catalogue, unless otherwise agreed between the Parties in the Procurement Services Contract, and subject to any applicable review by the Global Fund. Supplies and Services not included in the Catalogue will be procured in accordance with and subject to such descriptions and specifications as agreed between the Parties in the Procurement Services Contract.

8.3 The Customer understands that, in accordance with its mandate, UNFPA maintains an inventory of reproductive health and other population-related supplies. UNFPA may fulfill its obligations under the Procurement Services Contract by drawing on supplies available from its inventory.

## **9. SHIPMENT AND DELIVERY OF SUPPLIES**

9.1 The Supplies will be delivered in accordance with the Incoterms rule agreed in the Procurement Services Contract and these provisions.

9.2 The Parties recall that the consignee is nominated by the Customer. UNFPA will not act as consignee.

9.3 If applicable under the agreed Incoterms rule, the Supplies will be shipped to the consignee either by the Supplier or by UNFPA. UNFPA, as necessary and in agreement with the Customer, will have the right to ensure that any shipment of Supplies is re-directed, including to an alternative port of discharge, or shipped by an alternative mode of transportation.

9.4 Any special requirements for shipping documents are deemed unknown by UNFPA unless clearly stated and agreed upon in the Procurement Services Contract.

9.5 Unless the agreed Incoterms rule provides otherwise, the Customer will not be responsible for

obtaining any export licenses, permits, approvals and other official authorizations necessary for the export of the Supplies (“Export Licenses”) prior to delivery. Should the Supplier or UNFPA fail or be unable to obtain any necessary Export Licenses within a reasonable time, UNFPA will consult with the Customer as to whether the Procurement Services Contract should be terminated in its entirety, or whether the Customer desires that those parts of the Procurement Services Contract extending to the Supplies not affected by the failure or inability of the Supplier or UNFPA to obtain the Export Licenses should remain in effect, and under which conditions.

9.6 Unless the agreed Incoterms rule provide otherwise, the Customer is responsible for obtaining all import licenses, permits, approvals and other official authorizations for the import of the Supplies (“Import Licenses”), including Import Licenses for the country of destination as well as for any country through which the Supplies are transported, as applicable.

9.7 Unless the agreed Incoterms rule provide otherwise, the Customer is responsible for completing all customs formalities and obtaining all customs and related clearances in the country of destination as well as for any country through which the Supplies are transported, as applicable, unless otherwise agreed. This includes that the Customer will obtain or complete all customs applications, documentation, any “no objection” documentation, “certificates of value”, and similar documentation. All applicable customs or import duties, taxes and fees will be borne exclusively by the Customer.

9.8 The Customer is responsible for ensuring that the Supplies are covered by appropriate product registrations and approvals, including regulatory registrations and approvals, for the country where the Supplies will be used. Without prejudice to the foregoing, UNFPA will undertake its best efforts to select a manufacturer or Supplier whose items will be registered in the respective country on the target delivery date.

9.9 Where the Customer elects to obtain the services of a clearing agent or similar contractor, the Customer will be liable to pay all associated costs and fees.

## **10. INSURANCE OF SUPPLIES DURING SHIPMENT**

10.1 Unless the agreed Incoterms rule provides otherwise, the Supplies will be insured by UNFPA against loss, damage and destruction during shipment, including during any consolidation, deconsolidation, transit, trans-shipment and temporary storage while in transit, subject to such terms and conditions provided for in UNFPA’s cargo insurance policy. The Customer will be responsible to fund all amounts, if any, within any policy deductible or retention.

## **11. PROVISION OF SERVICES**

11.1 Where the Services require that permits, licenses or other approvals be obtained, the Customer will be solely responsible for obtaining such permits, licenses and approvals.

## **12. INSPECTION AND TESTING**

12.1 UNFPA may, at its sole discretion, conduct any pre- or post-shipment inspection and testing of Supplies at Internationally Accredited Laboratories. The cost of such pre- or post-shipment inspection and testing, if any, is included in the Price Quote Form and will be borne by the Customer.

12.2 In the event that the Customer is required, by applicable national regulations, to conduct any pre- or post-shipment inspection or testing of Supplies, the results of any such inspection or testing

shall not be enforceable against UNFPA. However, it is understood that any such pre- or post-shipment testing should be done at Internationally Accredited Laboratories. The Customer will notify the Supplier without undue delay of such pre- or post-shipment testing, through UNFPA as provided in clause 21.9, and provide the Supplier with a full copy of any pre- or post-shipment testing laboratory report. The preceding sentence shall operate without prejudice to the provisions of clause 14.1. Any cost or expense associated with pre- or post-shipment testing conducted hereunder shall be borne by the Customer.

12.3 In the event that the Customer requests UNFPA to conduct any re-testing of the Supplies following the Customer's pre- or post-shipment inspection or testing, and in the event that UNFPA authorizes the request, such re-testing will be at an Internationally Accredited Laboratories and at the Customer's expense. Such authorization shall be requested as a provided in clause 21.9.

### **13. RE-PACKAGING AND RE-LABELING OF SUPPLIES**

13.1 The Customer will ensure that the Supplies are not re-packaged (this shall extend to both primary and secondary packaging) or re-labeled, or that their presentation or delivery is not modified in any other way, without the prior written permission from the Supplier, which shall be requested through UNFPA as provided in clause 21.9. Without prejudice to the preceding sentence, the Customer shall carry the sole responsibility of ensuring that any such re-packaging, re-labeling or modification in the presentation or delivery of the Supplies, complies with all applicable laws, regulations and government policies.

13.2 Without prejudice to clause 12 (Inspection and Testing) above, the Customer will ensure that Supplies, once received by the Customer, are checked without undue delay for purposes of verifying the relevant quantity as well as identifying any visible quality issues.

13.3 The Customer will notify the Supplier through UNFPA as provided in clause 21.9, without undue delay, if any batch of the Supplies is, or is likely to be, affected by an alleged deviation in quality or quantity. The Customer will ensure that Supplies affected by an alleged quality deviation are not further distributed until guidance from the Supplier through UNFPA has been received.

13.4 The Customer will ensure that the Supplies will be stored, including during transportation, by the Customer in accordance with current WHO Good Storage and Transportation Guidelines and all Supplier's instructions, and in a manner suitable to maintain the quality and efficacy of the Supplies.

13.5 The Customer will ensure effective warehouse management, warehouse security, and inventory tracking and control, for all Supplies.

13.6 The Customer will ensure that the Supplies will be distributed and delivered together with all relevant information, including shelf-life information and applicable patient, consumer or user instructions.

13.7 Should Supplies, at any point in time, become subject to a recall or other form of withdrawal from the market by the Supplier, e.g. for quality-related concerns ("Recalled Supplies"), the Customer will ensure that distribution of the Recalled Supplies stops immediately and follow all corresponding instructions from the Supplier. The Customer will ensure that Recalled Supplies are not returned to stock subject to distribution without the prior written permission from the Supplier, which shall be requested through UNFPA as provided in clause 21.9.

13.8 Where, exceptionally, disposal of Supplies has been ordered by a competent authority, the Customer will immediately notify the Supplier through UNFPA as provided in clause 21.9, to

determine a procedure mutually acceptable to the Customer and the Supplier.

#### **14. WARRANTY**

14.1 To the extent legally possible, UNFPA will pass on all warranties offered by the Supplier to the Customer.

14.2 UNFPA does not offer any warranties regarding the Supplies or Services. UNFPA expressly disclaims any implied warranties, including warranties of merchantability and of fitness for a particular purpose.

14.3 The Customer warrants that the Supplies and Services specifications, as included in the Procurement Services Contract, comply with any requirements under applicable laws or regulations (including for their importation, (product) registration, packaging, storage, distribution, and use), as well as any requirements under applicable government policies, including those related to public health and development.

14.4 In consideration of UNFPA's status and mandate, the Customer undertakes to ensure and warrants that any Supplies or Services procured by UNFPA on behalf and at the request of the Customer hereunder, will not be used by the Customer, its agents, servants, employees, subcontractors or any third party, for any profit making, business or similar concern. This shall not preclude the resale of any Supplies by the Customer for purposes not primarily related to the commercial generation of profit. However, should the Customer intend to use the Supplies or Services for purposes involving social or subsidized marketing of Supplies on the basis of public health or development policy, the Customer must consult with UNFPA and obtain UNFPA's prior written authorization. Such authorization shall be requested as provided in clause 21.9.

14.5 For purposes of these Service Conditions, "sexual exploitation" means any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to, profiting monetarily, socially or politically from the sexual exploitation of another; "sexual abuse" means the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions. The Customer acknowledges and agrees that sexual exploitation and abuse are strictly prohibited, including in connection with the Supplies and Services procured by UNFPA on behalf and at the request of the Customer hereunder, and accordingly the Customer undertakes to ensure and warrants that those Supplies and Services will not be used by the Customer, its agents, servants, employees, subcontractors or any other third party, for purposes of or in connection with any sexual exploitation or sexual abuse. Without prejudice to the generality of the foregoing:

14.5.1 Sexual activity with any person less than eighteen years of age ("child"), regardless of any laws relating to the age of majority or to consent, shall constitute the sexual exploitation and abuse of such person. Mistaken belief in the age of a child shall not constitute a defense under these Service Conditions.

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

#### **15. LIABILITY AND CLAIMS**

15.1 UNFPA shall not be liable either to the Customer or to any third party for any claims or demands arising out of or relating to the Procurement Services including but not limited to any claims or



demands arising out of or relating to any defect in the quality or quantity, the shipment (including any loss of or damage to the Supplies, or delay during transport or shipment), or use of the Supplies or Services, or otherwise, unless caused solely by the failure of UNFPA to execute the Procurement Services with reasonable diligence. In any event, UNFPA shall not be liable for any incidental, indirect or consequential damages to, or for any lost revenues or profits by, the Customer or any third party, and UNFPA's total liability shall, in any event, not exceed the value of the Supplies and Services with respect to which the claim or demand is made.

15.2 The Customer will be solely responsible for asserting vis a vis the Supplier any claims or demands arising out of or relating to or in connection with the Procurement Services Contract, including but not limited to any claims or demands arising out of or relating to any defect in the quality, quantity, shipment, or use of the Supplies or Services, or otherwise. UNFPA will make reasonable efforts to provide to the Customer any reasonable assistance in connection with such claims or demands. The Supplies may not be returned to UNFPA.

15.3 Without prejudice to the foregoing, claims in respect of loss, damage to and destruction of Supplies arising under UNFPA's cargo insurance policy will be submitted by UNFPA to its insurer on the Customer's behalf. Accordingly, any settlement of claims received by UNFPA in this manner will be transferred by UNFPA to the Customer.

15.4 The Parties will use their best efforts to avoid any additional costs and expenses not provided for in the Price Quote Form. However, the Parties are aware that during the performance of the Procurement Services, including during transport and shipment, additional costs and expenses may nevertheless be incurred, for example as a result of or in connection with delay, port congestion, warehousing, overtime, additional logistics or security charges, instructions issued to UNFPA, the carrier or the freight forwarder by the Customer or the consignee, demurrage and detention (including container demurrage and detention), industrial action, or any re-direction of supplies during shipment (including to an alternative port of discharge) or shipment by an alternative mode of transportation ("Additional Costs"). Consistent with the principle contained in UNFPA Financial Regulation 15.3 that all costs associated with the Procurement Services shall be borne by the Customer, the Customer or consignee will pay any Additional Costs directly to the carrier, freight forwarder, warehouse operator, port authority, service provider or other party. This will not apply if the Additional Costs were caused solely by the failure of UNFPA to execute the Procurement Services with reasonable diligence.

15.5 Any compensation received by UNFPA from manufacturers, Suppliers or shippers arising out or related to contractual or other liability of such manufacturers, Suppliers or shippers in connection with the procurement and delivery of the Supplies shall be for the Customer's account and shall be dealt with by UNFPA in accordance with the Customer's instructions.

## **16. INDEMNIFICATION**

16.1 The Customer will indemnify, defend, and hold and save harmless, at the Customer's own expense, UNFPA, its agents, servants and employees, from and against all and any demands, claims, losses, shortfalls, suits or other causes of action or liability of any kind or nature, including costs and expenses and legal fees, caused by, arising out of or in connection with the Supplies, Services, the performance by UNFPA of the Procurement Services, and the use of the Supplies by the Customer or third parties (including but not limited to causes of action based on product liability).

16.2 UNFPA shall advise the Customer about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Customer 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. UNFPA shall have the right, at its sole discretion and own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing. UNFPA shall immediately inform the Global Fund of any such suits, proceedings, claims, demands, losses or liability.

16.3 Without prejudice to the generality of clauses 15.4, 16.1 and 16.2, UNFPA shall have the right, at its sole discretion, to settle any claims or demands relating to Additional Costs, in which case the Customer agrees to indemnify UNFPA, its agents, servants and employees, for and in connection with any such settlement. UNFPA shall immediately inform the Global Fund should UNFPA decide to settle claims or demands pursuant to this clause 16.

## **17. TERMINATION OF CONTRACT**

17.1 Either Party may terminate the Procurement Services Contract giving thirty (30) days' written notice to the other Party.

17.2 A Party prevented by a cause constituting force majeure under the Procurement Services Contract shall, without undue delay, 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 Procurement Services Contract. On receipt of the notice required hereunder, the Party not affected by the occurrence of a cause constituting force majeure shall take such action as it reasonably considers to be 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 Procurement Services Contract. Either Party shall have the right to terminate the Procurement Services Contract for reason of force majeure giving five (5) days' written notice to the other Party following receipt of the notice required in accordance with the first sentence of this clause.

17.3 Upon termination of the Procurement Services Contract, the Parties shall take all reasonable measures to permit an orderly conclusion to their engagement. The provisions of these Service Conditions will survive any termination to the extent necessary to permit an orderly settlement of accounts between the Parties.

## **18. REFUNDS; FINAL SETTLEMENT**

18.1 Where UNFPA has fulfilled its obligations under the Procurement Services Contract, the Payment shall be considered final and is not refundable. However, the Customer will be entitled to a refund of the Contingency, if any, to the extent that the Contingency has not been used by UNFPA. Where any balance is owed by the Customer to UNFPA in accordance with the terms of these Service Conditions, the Customer will transfer such balance to UNFPA upon a written request.

18.2 In the case of termination of the Procurement Services Contract, UNFPA will deduct all costs, expenses and liabilities incurred by UNFPA for or in connection with the Procurement Services Contract from any refund to the Customer, including: (i) any costs and expenses incurred by UNFPA for or in connection with the procurement of the Supplies and Services; (ii) where UNFPA has shipped Supplies from its inventory, the cost of the Supplies and any costs and expenses incurred by UNFPA in connection with the Supplies (which may include any expenses for warehousing and warehouse insurance costs); (iii) any liabilities, including contract liabilities, assumed by UNFPA in reliance on or in respect of the Procurement Services Contract; (iv) any costs, charges, expenses, penalties and other payments or liabilities incurred by UNFPA or imposed by third parties, including but not limited to the Supplier and any carrier or freight forwarder, for or in connection with any cancellation or termination; (v) the prorated Handling Fee; and (vi) the Contingency, if any, to the

extent that it has not been used by UNFPA in accordance with these Service Conditions. Following final accounting, any remaining balance will be refunded to the Customer. In the case of termination for convenience of the Procurement Services Contract by UNFPA, UNFPA will reimburse the full payment received from the Customer.

18.3 Upon request, UNFPA will provide a final financial statement to the Global Fund and the Customer after all transactions have been completed, confirming that the Procurement Services have been provided and that Payment has been received, and whether any balance is owed.

## **19. SETTLEMENT OF DISPUTES**

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

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

19.2 If the Customer is a United Nations Specialized Agency, another intergovernmental organization or a non-governmental organization, the following shall apply:

19.2.1 The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Procurement Services Contract or the breach, termination, or invalidity thereof. In case of such dispute, controversy, or claim, the Parties shall inform and seek advice from the Global Fund. 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.

19.2.2 Any dispute, controversy, or claim between the Parties arising out of the Procurement Services Contract or the breach, termination, or invalidity thereof, unless settled amicably under clause 19.2.1, 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 Procurement Services Contract, order the termination of the Procurement Services 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 Procurement Services 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 Procurement Services 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. Should LIBOR no longer be available, the United States Federal Reserve Bank of New York’s Secured Overnight Financing Rate (“SOFR”) then prevailing shall be used, 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.

19.3 If the Customer is a fund, programme, subsidiary organ or other entity of the United Nations, the following shall apply:

19.3.1 The Parties shall use their best efforts to promptly settle through direct negotiations any dispute, controversy or claim arising out of or in connection with this Procurement Services Contract or any breach thereof. Any such dispute, controversy or claim which is not settled within sixty (60) days from the date either Party has notified the other Party of the nature of the dispute, controversy or claim and of the measures which should be taken to rectify it, shall be finally and unreviewably resolved through consultation between the Executive Heads of each of the two Parties.

## **20. PRIVILEGES AND IMMUNITIES; INTERPRETATION**

20.1 Nothing contained in or relating to the Procurement Services Contract, including these Service Conditions, shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNFPA.

20.2 The Procurement Services Contract, including these Service Conditions, shall be interpreted in a manner that ensures that it is consistent with the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946; where the Customer is a government entity, the basic agreement, if any, concluded between UNFPA and the Government; and UNFPA Financial Regulation 2.2 T i. and 15.3.

## **21. FINAL PROVISIONS**

21.1 The Procurement Services Contract shall supersede any previous agreement or understanding by the Parties with regard to the Procurement Services, and shall constitute the entire agreement on the matter.

21.2 No delay or failure by a Party to exercise any powers, rights or remedies under these Service Conditions will operate as a waiver of them, nor will any single or partial exercise of any such powers, rights or remedies preclude any other or further exercise of them. For any waiver to be effective it must be in writing and signed by an authorized representative of the respective Party.

21.3 Any Procurement Services provided by UNFPA under this Procurement Services Contract are provided on a non-exclusive basis.

21.4 Any cost or expense associated with any disposal of the Supplies shall be borne by the Customer, unless otherwise agreed between the Parties. The Customer agrees that disposal of Supplies will be done in a sustainable manner.

21.5 The Payment and the Procurement Services provided by UNFPA hereunder will be subject exclusively to the provisions on internal and external audit provided for in the decisions of UNFPA’s

Executive Board and UNFPA's financial regulations, rules, and procedures.

21.6 The Customer represents and warrants that it has full power and authority to enter into this Procurement Services Contract, and to perform all of the transactions contemplated therein.

21.7 The Customer warrants that it has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Procurement Services Contract or the conclusion thereof to any representative, official, employee, or other agent of UNFPA. The Customer acknowledges and agrees that any breach of this provision is a breach of an essential term of the Procurement Services Contract.

21.8 The Customer shall not, except after obtaining the written authorization of UNFPA, assign, transfer, pledge or make other disposition of the Procurement Services Contract, or any part thereof, or any of the Customer's rights or obligations under the Contract. Such authorization shall be requested as provided in Clause 21.9.

21.9 Any notification and any written authorization or permission required to be obtained by the Customer from or through UNFPA under these Service Conditions shall be, as applicable, submitted to or requested from, in writing the Chief, Supply Chain Management Unit, UNFPA, who may be contacted at Marmorvej 51, 2100 Copenhagen, Denmark; or at [Procurement@unfpa.org](mailto:Procurement@unfpa.org).

21.10 The Customer acknowledges and agrees that UNFPA may collect, use, process, transfer and publish Customer information and data relating to, or in connection with, the provision of the Procurement Services (the "Information") for purposes of providing the Procurement Services in accordance with UNFPA's mandate and to improve the global availability of reproductive health supplies (the "Specified Purposes"). UNFPA will not collect, use, process, transfer or publish the Information in a form that personally identifies a natural person except to the extent necessary to achieve the Specified Purposes.