

**ANNEXE B: CONTRACTUAL PROVISIONS ON SUPERVISION OF CONSTRUCTION WORKS  
CONTRACTS**

Design and Supervision Services for the Construction of « SUPERVISION, SUIVI ET CONTROLE DES TRAVAUX DE CONSTRUCTION DE 96 SALLES DE CLASSE ET 96 PORTES DE LATRINES REPARTIS DANS 16 ECOLES - PROVINCE DU KASAÏ CENTRAL, SUBDIVISES EN 5 LOTS »

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THIS AGREEMENT FOR CONSULTANT SERVICES IN DESIGN AND SUPERVISION FOR CONSTRUCTION OF « SUPERVISION, SUIVI ET CONTROLE DES TRAVAUX DE CONSTRUCTION DE 96 SALLES DE CLASSE ET 96 PORTES DE LATRINES REPARTIS DANS 16 ECOLES - PROVINCE DU KASAÏ CENTRAL, SUBDIVISES EN 5 LOTS » (together with the schedules and attachments hereto, this "Agreement") is made on \_\_\_\_\_ [E.G. 26TH DECEMBER 2007]

BETWEEN: UNICEF, THE UNITED NATIONS CHILDREN'S FUND ("UNICEF"), an international inter-governmental organization established by the General Assembly of the United Nations by resolution No. 57(1) of 11 December 1946 as a subsidiary organ of the United Nations, having its headquarters at UNICEF House, Three United Nations Plaza, New York, New York, 10017, U.S.A. and having an office at 372, avenue Colonel Mondiba, Kinshasa – Ngaliema, DR CONGO;

AND: [E.G. PT BITA ENARCON ENGINEERING, INDONESIA] (the "Consultant"), organized and existing under the laws of DR CONGO and having its principal offices at \_\_\_\_\_ [E.G. PAHLAWAN NO.74, BANDUNG 40124, WEST JAVA, INDONESIA]; together with UNICEF the "Parties" and each a "Party".

WHEREAS:

A. UNICEF works with governments, civil society organizations and other partners world-wide including the Government of DR CONGO (the "Government") to advance children's rights to survival, protection, development and participation, and is guided by the Convention on the Rights of the Child.

B. WHEREAS, in accordance with the Basic Cooperation Agreement between UNICEF and the Government dated **OCTOBER, 24, 2018** the ("Basic Cooperation Agreement"), UNICEF has agreed to support the Government in a programme developed by the Department of **EDUCATION** to re-build the physical infrastructure of « **SUPERVISION, SUIVI ET CONTROLE DES TRAVAUX DE CONSTRUCTION DE 96 SALLES DE CLASSE ET 96 PORTES DE LATRINES REPARTIS DANS 16 ECOLES - PROVINCE DU KASAÏ CENTRAL, SUBDIVISES EN 5 LOTS** ».

C. By REQUEST FOR PROPOSAL DATED **05 SEPTEMBER 2019**, DOCUMENT - **LRPS-2019-9151079** the ("Request for Proposal"), UNICEF invited proposals for the provision of professional services of a qualified Engineering/Architectural firm to assist in developing layout plans, preparing detailed designs, bid documentation and managing the construction of « **SUPERVISION, SUIVI ET CONTROLE DES TRAVAUX DE CONSTRUCTION DE 96 SALLES DE CLASSE ET 96 PORTES DE LATRINES REPARTIS DANS 16 ECOLES - PROVINCE DU KASAÏ CENTRAL, SUBDIVISES EN 5 LOTS** ».

D. By way of the **TECHNICAL AND FINANCIAL PROPOSAL DATED xx xxxx xx -DOC. xxxxxxxx**, AS AMENDED BY THE CLARIFICATION OF PROPOSAL DATED **xx xxxxxx xxx**], among others together the ("Proposal"), the Consultant responded to the Request for Proposal and represented that it is qualified, capable and willing to provide the required provision of design and supervision services and that if selected to undertake this assignment it would work in collaboration with \_\_\_\_\_ [E.G. AN INTERNATIONAL COMPANY BASED IN INDONESIA, GHD PTY LTD].

E. UNICEF wishes to engage the Consultant to undertake the work described in Annex 1 to this Agreement (the "Work"), all on the terms and conditions set forth in this Agreement; and the Consultant represents that it is qualified, ready, able and willing to carry out the work on the same terms and conditions.

NOW, THEREFORE, the Parties hereto mutually agree as follows:

#### 1. AGREEMENT DOCUMENTS

1.1 This document and all annexes hereto, together with the following named documents, which are incorporated herein by reference, constitute the entire Agreement between UNICEF and the Consultant in connection with the Work:

- (a) Annex 1 - Scope of Work\*
- (b) Annex 2 - Reporting and Output requirements
- (c) Annex 3 - Personnel & Sub-Consultants
- (d) Annex 4 - Schedule of Payment
- (e) Annex 5 - Breakdown of financial proposal
- (f) Annex 6 - Schedule of works
- (g) Annex 7 - Advance Guarantee Form (Not applicable)
- (h) The Request for Proposal; and\*\*
- (h) The Proposal.\*\*
- (i) Annex A UNICEF's General Terms and Conditions of Contract (Services)

\*Note: that in Annex 1, the Scope of Work, the Consultant is referred to as the "Consultant".

\*\*Note: Model documents for a RFP and Proposal are not attached to this document, but are still a requirement of the Agreement to be made available at the Country or Regional level.

1.2 The Agreement documents are to be taken as complementary of one another, but in case of ambiguities, discrepancies or inconsistencies among them, the Agreement shall be interpreted on the basis of the following order of priority:

- (a) this document;
- (b) Annexes I to 8;

- (c) Annex A UNICEF's General Terms and Conditions of Contract (Services)
- (d) the Request for Proposal; and
- (e) the Proposal, as clarified.

1.3 The Agreement represents the entire and integrated agreement of the Parties with regard to the subject matter hereof and supersedes all prior agreements, negotiations and representations, either written or oral.

## 2. DEFINITIONS

In this Agreement, the following terms shall have the following meanings:

2.1 Designated Representative: The UNICEF officer designated as representing UNICEF in the contract.

2.2 Authorised Representative: Any person, whether UNICEF officer or employee of the Consultant, authorized by UNICEF in writing to carry out inspection, supervision etc. of the Works.

2.3 UNICEF: Means the contractual party as set out in the preamble to the General Conditions of Agreement. When used in connection with inspections, supervision etc., the term shall include any Authorised Representative.

2.4 Consultant: The person or company whose bid has been accepted by UNICEF to carry out the Works as described in Annex I to the General Conditions of Agreement.

2.5 Sub-contractor: Any person or company that has been named and sub-contracted by the Consultant with the consent of UNICEF to carry out a specified part of the Works as described in Annex I to the General Conditions of Agreement.

2.6 Consultant's Representative: The person authorised by the Consultant to make decisions on the Consultant's behalf for any one site or part of the Works.

2.7 Delivery Date is the time the work as defined in Annex I is completed at the location(s) indicated for delivery,

2.8 Defects Liability is the period during which the Contractor is responsible for repairing or rectifying defects that appear in the Works. The period usually commences upon Substantial completion of the Works and runs until the Final Completion

## 3. GENERAL RIGHTS AND OBLIGATIONS OF THE CONSULTANT

3.1 The Consultant shall be responsible to complete the Work. The Consultant shall perform its obligations under this Agreement with all reasonable skill and care and in conformity with sound professional, administrative and financial practices. It is understood and agreed that the Consultant shall undertake the Work in collaboration with \_\_\_\_\_ [E.G. AN INTERNATIONAL COMPANY, GHD PTY LTD]; provided however that the Consultant shall remain fully liable to UNICEF for completion of the Work in accordance with this Agreement.

3.2 The Consultant shall provide architectural and engineering design services, and construction management and supervision support with involvement of the local community, while achieving the cost-effective provision of child-friendly schools.

3.3 The Consultant shall take full responsibility in the identification and pre-qualification of Works Contractor, preparing bidding documents and tender procedures for UNICEF's approval.

3.4 The Consultant shall ensure day to day construction site supervision through a resident Engineer.

3.5 The Consultant ensures that all materials used in the course of these Works shall be new and proper for their use. No reusable materials coming from the Site shall be used unless permitted by UNICEF. Other materials shall be stored on Site until the end of the Works. All materials, equipment and products shall be installed in accordance with the written recommendations of the manufacturer.

3.6 The Consultant shall have the right to review samples of construction materials and fixtures. The Contractor shall submit such samples, and relevant information, in sufficient time for the Consultant to complete review of samples. Each sample shall be labeled as to origin and intended use in the Works.

3.7 The Consultant ensures the completion of the Works in accordance with the delivery schedule as described in Annex 4 and the technical specifications.

#### 4. GENERAL RIGHTS AND OBLIGATIONS OF UNICEF

4.1 UNICEF shall make periodic payments upon completion of the deliverables set out in Annex 4 (the "Deliverables").

4.2 The Consultant must allow unlimited access to the Designated Representative, or to his authorised representatives, to supervise the Works. The Representative is entitled to review the type, quantity and quality of materials and workmanship used in the Works to ensure compliance with the Agreement Documents and the standards defined by this Form of Agreement.

4.3 UNICEF will issue all certificates upon satisfaction of conditions necessary for the issuance of such certificates, supply all necessary information and written instructions for the Consultant to carry out the supervision of the Works properly.

4.4 To the extent it is able, UNICEF shall give to the Consultant right of access to, and possession of, the Site within such times as is required to enable the Consultant to proceed in accordance with this Agreement.

4.5 UNICEF shall have the right to issue, and the Consultant shall comply with, additional instructions. Such additional instructions shall complement and/or clarify the Agreement Documents and shall have no effect on the definition of the Works, the Prices and/or the Substantial Completion Dates. Such instructions may take the form of technical specifications, drawings, samples, models or instructions. All such instructions shall be issued in writing.

#### 5. TERM OF AGREEMENT

5.1 From the Effective Date of the Agreement, specified in Article 32, the Agreement shall remain in force for a period of **18 MONTHS** by the end of which period the Consultant shall have fulfilled all of its obligations under the Agreement, unless earlier terminated in accordance with the terms of the Agreement.

#### 6. PROJECT AUTHORITY

6.1 UNICEF and the Consultant shall each nominate a Project Authority who shall be responsible for the day-to-day liaison and management of the Agreement.

#### 7. SCHEDULE FOR COMPLETION OF THE WORK

7.1 The Consultant shall commence and complete the works to UNICEF's satisfaction in accordance with the schedule set out in Annex 6 and in any event no later than **18** months period from the effective date of this Agreement.

7.2 The Consultant shall keep a work diary at the Site and maintain it daily. This diary shall describe all works started and completed each day and shall be checked periodically by UNICEF.

#### 8. SUBSTANTIAL AND FINAL COMPLETION

8.1 The Works will be deemed substantially completed when they are completed in accordance with the Agreement Documents and the standards defined by this Agreement or when they are effectively used for the purpose for which they are intended.

8.2 UNICEF and the Consultant shall inspect the Works at the Site on the date they are substantially completed and UNICEF will issue a certificate of substantial completion (the "Certificate of Substantial Completion"), provided that

the Works are satisfactory according to the Agreement Documents and the standards defined by this Agreement. The Certificate of Substantial Completion shall list all Defects that must be remedied by the Consultant within 20 days.

8.3 After issued Certificate of Substantial Completion and within the Defects Liability Period, UNICEF, the Consultant and the Contractor shall perform quarterly joint inspections to each site to verify any defects resulting from "defective materials or poor workmanship". The Consultant shall consolidate a report of defects, if any. The parties shall agree on the period for remedial of all defects described on the report.

8.4 UNICEF will carry out a final inspection at each Site (the "Final Inspection") [E.G. SIX (6)] months after the issuance of the Certificate of Substantial Completion for the Site. The Works shall be deemed to be completed when all Defects listed on the Certificate of Substantial Completion, and all Defects that have become apparent after the issuance of the Certificate of Substantial Completion, have been remedied by the Contractor and UNICEF considers the Works to be satisfactory according to the Agreement Documents and the standards defined by this Agreement. UNICEF will then issue a Certificate of Final Completion.

8.5 Upon signing of the Certificate of Final Completion at each Site, the Site and Works shall be taken over by the local authorities and beneficiaries.

## 9. AGREEMENT PRICE

9.1 The total price for the Work (for phases 1 to 4 inclusive) as set forth in Annex I to the Agreement is \_\_\_\_\_ (the "Price"). The breakdown of Price is shown in Annex 4.

9.2 The Consultant shall not perform any work or services or provide equipment, products, materials or supplies which may result in the Price being exceeded without a prior written agreement by both Parties.

9.3 The price is not subject to any adjustment or revision because of price or currency fluctuations, the actual costs incurred by the Contractor in the performance of its obligations hereunder or modifications to this Agreement or the Contract Documents. Price adjustment or revision shall be agreed by duly signed amendment in accordance with Article 22.1 of this agreement.

## 10. INSPECTION AND ACCEPTANCE

10.1 UNICEF shall have a reasonable time after completion of the Works or part of the Works, and before issuance of the Certificate of Substantial Completion, to inspect the Works and to reject and refuse acceptance of Works not conforming to the Agreement. Inspection prior to completion of Works does not relieve the Consultant from any of its obligations under this Agreement.

10.2. Payment for services pursuant to this Agreement shall not be deemed an acceptance of the services.

## 11. INVOICING INSTRUCTIONS

11.1 Invoices must refer to the Agreement and clearly indicate prices for each Agreement item number. The Consultant shall submit the original invoice to the following address:

Section Opérations / Supply et Logistique  
372, avenue colonel Mondjiba, Commune de Ngaliema  
Bureau UNICEF Kinshasa

## 12. PAYMENT

12.1 Payment shall be made in accordance with this Agreement upon acceptance of an invoice. Invoices shall be submitted upon completion of the activities and each invoice shall be due no later than five (5) working days after the completion of the activities set out in Annex 6.

12.2 Subject to Article 10 of this Agreement, UNICEF shall, on fulfillment of the delivery terms, make payment within thirty (30) days of receipt of the invoice.

12.3 UNICEF shall make the payments in accordance with Annex 4 – Schedule of Payment.

12.4 UNICEF shall within two (2) weeks notify the Consultant of any dispute or discrepancy in the content or form of the invoice. The value of such disputed items as per the Agreement shall be deducted from the invoice(s) in which they appear and the balance will be processed for payment. UNICEF and the Consultant shall consult in good faith to promptly resolve any dispute with respect to any invoice or portion thereof.

12.5 All payments made by UNICEF into the bank account specified in the Agreement will have liberating effect and considered as effectively made.

12.6 The total amount of the interim payments shall be **NINETY FIVE PERCENT 95%** of the value of the Agreement of the Remuneration Only. The remaining **E.G. FIVE PERCENT 5%** thus withheld shall be paid on submission of final report. Cost of services under Defect Liability related to the construction work on sites, is included in the Agreement price.

12.7 UNICEF shall not be liable for any payment exceeding the Agreement price which has not been agreed by UNICEF in written prior to the expenditure.

12.8 UNICEF may make an advance payment for mobilization when the Consultant submits a guarantee as established in Article 13.

### 13. ADVANCE PAYMENT GUARANTEE (Not applicable)

13.1 The Consultant shall, no later than five (5) working days following the effective date of this Agreement, at its own expense furnish an Advance Payment Guarantee for the advanced amount in the form set forth in Annex 7, and with such Surety or Sureties as shall be approved by UNICEF

13.2 The Consultant shall ensure that the Guarantee is valid and enforceable until the advance payment has been repaid. The advance payment shall be repaid through percentage deductions in the invoices. Advance payment shall be deducted as follows:

- a. UNICEF shall commence deducting advance payment from the first accepted invoice in accordance with the Payment Schedule.
- b. Deduction shall be made at the amortization rate of one quarter (23%) of the amount of each invoice (excluding the advance payment and deductions and repayment of retention) until such time as the advance payment has been repaid.

13.3 Any remaining balance from the advance payment shall be repaid prior to the Substantial Completion Certificate or prior to termination or Force Majeure as established in Annex A: General Terms and Conditions.

### 14. LIQUIDATED DAMAGES

14.1 For the scope of services Annex 1, Liquidated Damages may apply if the delay is due to the proven fault of the Consultant.

14.2 If the Consultant fails to complete the Works in accordance with the dates stipulated in Article 7 above, UNICEF shall have the right to deduct from any payment due to the Consultant the amount of one tenth of a per cent (0.1 %) of the Agreement Price per day of delay. These liquidated damages shall not relieve the Consultant from his obligations or responsibilities that he may have under the Agreement.

14.3 If these liquidated damages exceed more than ten (10%) of the Agreement Price, UNICEF may, after giving notice to the Consultant:

- a) terminate the Agreement, and
- b) complete or get the Services completed at the Consultant's expense with the remaining portion of the committed fee.

## 15. SITE INSPECTION BY THE CONSULTANT

15.1 The Consultant shall have inspected and examined the Site, its surroundings, data on sub-surface and hydrological conditions and environmental aspects. The Consultant shall ensure that the Contractor performs the works in accordance with the drawings and technical specifications.

## 16. TAX EXEMPTION

16.1 Section 7 of the Convention of 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 utilities services, and is exempt from customs 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 UNICEF's exemption from such taxes, duties or charges, the Consultant shall immediately consult with UNICEF to determine a mutually acceptable procedure.

16.2 Accordingly, the Consultant authorises UNICEF to deduct from the Consultant's invoice any amount representing such taxes, duties or charges, unless the Consultant has consulted with UNICEF before the payment thereof and UNICEF has, in each instance, specifically authorised the Consultant to pay such taxes, duties or charges under protest. In that event, the Consultant shall provide UNICEF with written evidence that payment of such taxes, duties or charges has been made and appropriately authorised.

## 17. CONFIDENTIAL NATURE OF DOCUMENTS

17.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Consultant under this Agreement shall be the property of UNICEF, shall be treated as confidential and shall be delivered only to the UNICEF authorized officials on completion of work under this Agreement.

## 18. INSURANCE AND LIABILITIES TO THIRD PARTIES

18.1 The Consultant shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Agreement.

18.2 The Consultant shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of work under this Agreement or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Consultant or its agents, servants, employees or sub-contractors performing work or services in connection with this Agreement.

18.3 Except for the workmen's compensation insurance, the insurance policies under this Article shall:

- a) Include a waiver of subrogation of the Consultant's rights to the insurance carrier against UNICEF.
- b) The Consultant shall, upon request, provide UNICEF with satisfactory evidence of the insurance required under this Article.

## 19. RATE PROGRESS

19.1 If, at any time:

- a) actual progress is too slow to complete within Time for Completion, and/or
- b) progress has fallen (or will fall) behind the proposed schedule.

19.2. The Consultant shall inform UNICEF and propose a revised schedule as well as a report describing the revised methods which the Consultant proposes to adopt in order to expedite the progress and complete within the time of completion. Additional cost shall be approved by UNICEF in addition to the delay damages provided that justifications are deemed acceptable for UNICEF.

## 20. SUPPLY OF INFORMATION



20.1 UNICEF shall supply the Consultant promptly with any information and/or documentation at its disposal which may be relevant to the performance of the Agreement.

20.2 UNICEF shall as far as possible co-operate with the Consultant to provide information that the latter may reasonably request in order to perform the Agreement.

## 21. MODIFICATIONS AND AMENDMENTS

21.1 Modification of the terms and conditions of this Agreement, including but not limited to any modification of the scope of the Services and/or of the Agreement Price may only be made by means of an addendum in writing, which shall be mutually agreed and signed by the Parties.

21.2 If the request for an amendment comes from the Consultant, it must submit such a request to UNICEF at least thirty (30) days before the amendment is intended to enter into force, except in cases which are duly substantiated by the Consultant and accepted by UNICEF.

21.3 Any modification to the Agreement which has not been made in the form of an addendum shall be considered null and void.

## 22. VARIATIONS

22.1 Prior to any instructions by UNICEF for variation in the Services (the "Variation"), the Project Authority shall notify the Consultant of the nature and form of such Variation. As soon as possible, after receiving such notice, the Consultant shall submit to the Project Authority a written document containing a description of the activities and tasks to be performed and/or the measures to be taken and a program for execution of the Variation; and

22.2 Where a Variation is necessitated by a proven default or breach of Agreement by the Consultant, any additional cost attributable to such Variation shall be borne by the Consultant.

22.3 Following the receipt of the Consultant's proposal, the Project Authority shall decide as soon as possible whether or not the Variation shall be carried out. If the Project Authority decides that the Variation shall be carried out, the Project Authority shall issue the instructions in writing to the Consultant stating that the Variation shall be carried out under the conditions given in the Consultant's proposal or as modified by the Project Authority.

22.4 On receipt of the instructions requesting the Variation, the Consultant shall proceed to carry out such Variation according to the terms and conditions of the Agreement.

## 23. CONFLICT OF INTEREST

23.1 The Consultant shall take all necessary measures to prevent or end any situation that could compromise the impartial and objective performance of the Agreement. Such conflict of interests could arise in particular as a result of economic interest, political or national affinity, family or emotional ties, or any other relevant connection or shared interest. Any conflict of interests which could arise during the performance of the Agreement must be notified in writing to UNICEF without delay.

23.2 UNICEF reserves the right to verify that such measures are adequate and may require additional measures to be taken if necessary. The Consultant shall ensure that its staff including its management is not placed in a situation which could give rise to conflict of interests. The Consultant shall replace, immediately and without compensation from UNICEF, any member of its staff exposed to such a situation.

23.3 The Consultant shall refrain from any contact which would compromise its independence or that of its personnel. If the Consultant fails to maintain such independence, UNICEF may, without prejudice to compensation for any damage which it may have suffered on this account, terminate the Agreement forthwith, after due notification and prove thereof.

23.4 The Consultant shall after the conclusion or termination of the Agreement, limit its role in connection with the project to the provision of the Services. Except with the written permission of UNICEF, the Consultant and any other sub-contractor, with whom the Consultant is associated or affiliated shall be disqualified from the execution of works, supplies or other services for the project in any capacity, including tendering for any part of the project.

23.5 Civil servants and other agents of the public administration of the beneficiary country, regardless of their administrative situation, shall not be recruited as experts in contracts financed by UNICEF in the beneficiary country unless the prior written approval has been granted by UNICEF.

23.6 The Consultant and anyone working under its authority or control in the performance of the Agreement or on any other activity shall be excluded from access to UNICEF financing available under the same project.

## 24. CODE OF CONDUCT

24.1 The Consultant shall at all time act loyally and impartially and as a faithful adviser to UNICEF in accordance with the rules and/or code of conduct of its profession as well as with appropriate discretion. It shall, in particular, refrain from making any public statements concerning the project or the services without the prior approval of UNICEF, and from engaging in any activity which conflicts with its obligations towards UNICEF under the Agreement. It shall not commit UNICEF in any way whatsoever without its prior written consent, and shall, where appropriate, make this obligation clear to third parties.

24.2 If the Consultant or any of its sub-consultants, personnel, agents or servants offers to give or agrees to offer or to give or gives to any person, any bribe, gift, gratuity or commission as an inducement or reward for doing or forbearing to do any act in relation to the Agreement or any other Agreement with UNICEF, or for showing favor or disfavor to any person in relation to the Agreement or any other Agreement with other organizations of the United Nations, then UNICEF may terminate the Agreement, without prejudice to any accrued rights of the Consultant under the Agreement.

24.3 The payments to the Consultant under the Agreement shall constitute the only income or benefit it may derive in connection with the Agreement and neither it nor its personnel shall accept any commission, discount, allowance, indirect payment or other consideration in connection with, or in relation to, or in discharge of, its obligations under the Agreement.

24.4 The Consultant shall not have the benefit, whether directly or indirectly, of any royalty, gratuity or commission in respect of any patented or protected article or process used in or for the purposes of the Agreement or the project, without the prior written approval of UNICEF.

24.5 The Consultant and its staff shall maintain professional secrecy, for the duration of the Agreement and after completion thereof. In this connection, except with the prior written consent of UNICEF, neither the Consultant nor the personnel employed or engaged by it shall at any time communicate to any person or entity any confidential information disclosed to them or discovered by them, or make public any information as to the recommendations formulated in the course of or as a result of the services. Furthermore, they shall not make any use prejudicial to UNICEF, of information supplied to them and of the results of studies, tests and research carried out in the course and for the purpose of performing the Agreement.

24.6 The execution of the Agreement shall not give rise to unusual commercial expenses. If such unusual commercial expenses emerge, the Agreement will be terminated. Unusual commercial expenses are commissions not mentioned in the Agreement or not stemming from a properly concluded Agreement referring to the Agreement, commissions not paid in return for any actual and legitimate service, commissions remitted to a tax haven, commissions paid to a recipient who is not clearly identified or commission paid to a company which has every appearance of being a front company.

## 25. VERIFICATION BY UNICEF BODIES

25.1 Documents must be easily accessible and filed so as to facilitate their examination. The Consultant must inform UNICEF of their precise location.

## 26. RECORDS

26.1 The Consultant shall keep full accurate and systematic records and accounts in respect of the services in such form and detail as is sufficient to establish accurately that the number of working days and the actual incidental expenditure identified in the Consultant's invoice(s) have been duly incurred for the performance of the Services.

26.2 Being a fee-based Agreement, timesheets recording the days worked by the Consultant's personnel must be maintained by the Consultant. If required, the Project Authority or any person authorized by UNICEF may require to examine the timesheets at any given time. The amounts invoiced by the Consultant must correspond to these timesheets. In the case of long-term experts, these timesheets must record the number of working days worked. In the case of short-term experts, these timesheets must record the number of days worked. Time spent traveling exclusively and necessarily for the purpose of the Agreement may be included in the numbers of working days, as appropriate, recorded in these timesheets.

26.3 Such records must be kept for a one (1) year period after the final payment made under the Agreement. Keeping of soft copies by scanning documents is allowed but the Consultant should keep the original documents for verification purposes. These documents comprise any documentation concerning income and expenditure and any inventory, necessary for the checking of supporting documents, including timesheets, plane and transport tickets, pay slips for the remuneration paid to the experts and invoices or receipts for incidental expenditure. Failure to maintain such records constitutes a breach of Agreement and will result in the termination of the Agreement.

## 27. INTERIM AND FINAL REPORTS

27.1 The Consultant must draw up interim reports and a final report during the period of execution of the Agreement. These reports shall consist of a narrative section and a financial section. For the sequence of such reports see Annex 2.

27.2 All invoices must be accompanied by an interim or final report. All invoices must also be accompanied by an up to date financial report. The structure of the interim or final financial report shall be the same as that of the contractually approved budget according to Annex 4. This financial report shall indicate, at a minimum, the expenditure of the reporting period, the cumulative expenditure and the balance available

27.3 Immediately prior to the end of the period of execution of the Agreement, the Consultant shall draw up a final progress report which must include, if appropriate, a critical study of any major problems which may have arisen during the performance of the Agreement.

27.4 This final progress report shall be forwarded to the Project Authority not later than thirty (30) days after the end of the period of execution of the Agreement. Such report shall not bind UNICEF.

27.5 Where the Agreement is performed in phases, the execution of each phase shall give rise to the preparation of a final progress report by the Consultant. Such report shall not bind UNICEF.

## 28. APPROVAL OF REPORTS AND DOCUMENTS

28.1 Where applicable, the approval by the Project Authority of reports and documents drawn up and forwarded by the Consultant shall certify that they comply with the terms of the Agreement.

28.2 Where applicable, UNICEF shall, within thirty (30) days of receipt, notify the Consultant of its decision concerning the documents or reports received by it, giving reasons should it reject the reports or documents, or request amendments. If UNICEF does not give any comments on the documents or reports within the time limit, the Consultant may request written acceptance of them. The documents or reports shall be deemed to have been approved by UNICEF if it does not expressly inform the Consultant of any comments within thirty (30) days of the receipt of this written request.

28.3 Where applicable, where a report or document is approved by UNICEF subject to amendments to be made by the Consultant, UNICEF shall prescribe a period for making the amendments requested.

28.4 Where applicable, where the Agreement is performed in phases, the execution of each phase shall be subject to the approval, by UNICEF, of the preceding phase except where the phases are carried out incrementally.

#### 29. RECOVERY OF DEBTS FROM THE CONSULTANT

29.1 The Consultant shall repay any amounts paid in excess of the final certified value due to UNICEF within forty five (45) days of receiving a request to do so.

29.2 Should the Consultant fail to make repayment as shown in 29.1 above, UNICEF may increase the amounts due by adding interest at the rediscount rate applied by the **DR CONGO CENTRAL BANK**, on the first day of the month in which the deadline expired, plus seven percentage points. The late-payment interest shall apply to the time which elapses between the date of the payment deadline (exclusive), and the date on which the Consultant's account is debited (inclusive). Any partial payments shall cover the interest thus established.

29.3 Bank charges arising from the repayment of amounts due to UNICEF shall be borne entirely by the Consultant.

#### 30. ASSIGNMENT AND INSOLVENCY

30.1 The Consultant shall not, except after obtaining the written consent of UNICEF, assign, transfer, pledge or make other dispositions of the Agreement, or any part thereof, of the Consultant's rights or obligations under the Agreement.

#### 31. GENERAL PROVISIONS

31.1 Any notice, request or consent required or permitted to be given or made pursuant to this Agreement will be in writing, and addressed and sent by registered mail or confirmed facsimile transmission as follows:  
If to UNICEF:

UNICEF, the United Nations Children's Fund  
372, avenue Colonel Mondiba, Kinshasa – Ngaliema, DR CONGO

If to the Consultant:

[E.G. ABC ENGINEERING  
JLN. PAHLA NO.79  
BAND 402 INDONESIA  
TELEPHONE: +42-12-71  
FAX: +42-72-73]

31.2 Notices will be deemed to be effective as follows: in the case of registered mail, seven (7) days after posting; in the case of facsimiles, twenty four (24) hours following confirmed transmission.

31.3 Nothing contained in the Agreement shall be construed as establishing a relation of master and servant or of principal and agent between the Parties or any of them.

31.4 The Agreement may be altered, modified or amended only by written instrument duly executed by all Parties in accordance with the procedure provided in Article 21 of this Agreement.

#### 32. EFFECTIVE DATE

32.1 This Agreement shall become effective as of \_\_\_\_\_ when both Parties have signed the Agreement.