

TERMS OF REFERENCE

FINAL EVALUATION of

**WFP - USDA McGovern -Dole International Food for Education and Child Nutrition Program's
Support in Liberia from 2013 to 2016**

WFP Liberia Country Office

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1. Introduction

1. These Terms of Reference (TOR) are for the final evaluation of the World Food Programme (WFP) McGovern-Dole (MGD) International Food for Education and Child Nutrition Program (FFE 699-2013/036-00-B) in Liberia. This evaluation is commissioned by WFP Liberia Country Office, and will cover the period from September 2013 to September 2016.
2. These TOR were prepared by the WFP Liberia Country Office M&E unit, based upon an initial document review and consultation with stakeholders and following a standard template. The purpose of the TOR is twofold. Firstly, it provides key information to the evaluation team and helps guide them throughout the evaluation process; and secondly, it provides key information to stakeholders about the proposed evaluation. Furthermore, these TOR will be used to select potential service providers that may want to submit proposals for the evaluation, following WFP's procurement procedures.

2. Reasons for the Evaluation

3. The reasons for the evaluation¹ being commissioned are presented below:

2.1 . Rationale

4. The United States Department of Agriculture (USDA) manages the MGD Food for Education program – a major funding mechanism for school feeding worldwide. USDA - MGD is one of the key long-standing donors supporting WFP School feeding programme in Liberia since 2009. Most recently, WFP Liberia was awarded a total of US\$ 20 million for the period of 2013-2015; though the evaluation will cover period 2013 to 2016 because of food stock balance from the grant. The USDA/MGD – WFP grant agreement incorporates 23 specific performance indicators and 31 results indicators against which performance of the programme will be measured.
5. Under the WFP-USDA agreement, WFP commits to conduct a final evaluation in order to measure overall performance and impact of the programme, gauging important elements such as lessons, challenges and overall impact, accountability and sustainability. Hence, this final evaluation, with its key findings and recommendations, will be paramount in further fine-tuning and strengthening WFP Liberia's School Feeding Programme.
6. The evaluation's findings and recommendations will serve to inform WFP's strategic and operational decision-making as well as further fine-tune or inform decisions and actions of other stakeholders involved.

2.2 Objectives

7. The main objective of this evaluation is to assess and report on the performance and results achieved under the MGD - WFP School Feeding Programme (SFP) in Liberia between September 2013 and

¹ This final evaluation builds upon previous baseline data (conducted in 2013 and 2014) and international outcome monitoring missions (conducted in 2014 and 2015)

September 2016. The Evaluation will serve the dual and mutually reinforcing objectives of accountability and learning:

- **Accountability** – The evaluation will assess and report on the performance and results of the USDA /MGD -WFP School Feeding Programme.
- **Learning** – The evaluation will determine the reasons why certain results occurred, derive good practices and pointers for learning. It will provide evidence-based findings to inform operational and strategic decision-making and future WFP programmes. Findings will be actively disseminated and lessons will be incorporated into relevant lesson sharing systems.

2.3 Stakeholders and Users

1. A number of stakeholders (both inside and outside of WFP) have an interest in the results of the evaluation and some of these will be asked to play a role in the evaluation process. Table 1 below provides a preliminary stakeholders' analysis, which should be deepened by the evaluation team as part of the inception phase.
2. Accountability to affected populations is tied to WFP's commitment to include beneficiaries as key stakeholders in WFP's work. As such, WFP is committed to ensuring gender equality and women's empowerment in the evaluation process, with participation through focus group discussions and consultation in the evaluation by women, men, boys and girls from different groups.

Table 1: Preliminary Stakeholders' analysis

Stakeholders	Interest in the evaluation and likely uses of evaluation report to this stakeholder
INTERNAL STAKEHOLDERS	
Country Office (CO) Liberia	Responsible for the country level planning and operations implementation, it has a direct stake in the evaluation and an interest in learning from experience to inform decision-making. It is also called upon to account internally as well as to its beneficiaries and partners for performance and results of its operation.
Regional Bureau (RB) Dakar	Responsible for both oversight of COs and technical guidance and support, the RB management has an interest in an independent account of the operational performance as well as in learning from the evaluation findings to apply this learning to other country offices.
WFP HQ	WFP has an interest in the lessons that emerge from evaluations, particularly as they relate to WFP strategies, policies, thematic areas, or delivery modality with wider relevance to WFP programming.
Office of Evaluation (OEV)	OEV has a stake in ensuring that decentralized evaluations deliver quality, useful and credible evaluations. OEV management has an interest in providing decision-makers and stakeholders with independent accountability for results and with learning to inform policy, strategic and programmatic decisions.
WFP Executive Board (EB)	The WFP governing body has an interest in being informed about the effectiveness of WFP operations. This evaluation will not be presented to the EB but its findings may feed into annual syntheses and into corporate learning processes.
EXTERNAL STAKEHOLDERS	
Beneficiaries	As the ultimate recipients of food assistance, beneficiaries have a stake in WFP determining whether its assistance is appropriate and effective. As such, the level of participation in the evaluation of women, men, boys and

	girls from different groups (e.g. students, Parents and teacher Association members,) will be determined and their respective perspectives will be sought.
Government (national and county levels)	The Government of Liberia, both at national and local levels, has a direct interest in knowing whether WFP activities are aligned with its priorities, harmonised with the action of other partners and meet the expected results. The Government has the overall ownership of the school feeding programme, and keen to draw lessons for future programmes, including for the Home Grown School Feeding initiative. Throughout the programme implementation, WFP jointly works with the Ministry of Education, the Ministry of Agriculture and the Ministry of Health. County and District Education Officers, School Management Committees (Parent Teacher Association (PTA) and Food Management Committees) are also involved in programme implementation and policy support.
UN Country Team (UNCT)	The Liberia United Nations Development Assistance Framework (UNDAF) 2013-2017/2018 ² - One Programme aims to contribute to the government's developmental objectives stipulated in the medium-term strategy known as the Agenda for Transformation (AfT 2012-2017). The UNCT is therefore interested in ensuring that WFP operation contributes to the UN concerted efforts. The partner agencies are interested in learning to what extent WFP interventions are contributing to the overall outcomes committed under UNDAF, in particularly UNICEF, FAO, UNDAF-thematic working groups, the Education Sector Donors Groups and the World Bank.
NGOs [Mary's Meals, Winrock Liberia, Center for Women's Agricultural Program-CWAP]	NGOs are WFP's implementing partners as well as have their own interventions. Some NGOs are members of the national school feeding technical committee where coordination and joint monitoring of the overall national programme takes place. The results of the evaluation might affect future implementation modalities, strategic orientations and partnerships.
Donors [USDA, the Russian Federation, Friends of WFP –US and Private donors]	The school feeding programme is a multi-donor initiative in which USDA is the largest long-standing donor. All donors have a vested interest on whether contributions have been spent in a cost-efficient and effective manner.

8. The primary users of this evaluation will be:

- The WFP Liberia Country Office and its partners in decision-making, notably related to programme implementation and/or design, Country Strategy and partnerships. Partners include Government counterparts, UN agencies as well as NGOs and other relevant stakeholders.
- Given the core functions of the Regional Bureau (RB), the RB is expected to use the evaluation findings to provide strategic guidance, programme support, and oversight
- WFP HQ may use evaluations for wider organizational learning and accountability
- OEV may use the evaluation findings, as appropriate, to feed into evaluation syntheses as well as for annual reporting to the Executive Board.

² https://www.unicef.org/liberia/UNDAF_2013-2017.pdf. UNDAF has been extended until December 2018 due to elections and the change of government.

3. Context and subject of the Evaluation

3.1. Context

9. Liberia is a least developed, low-income, food-deficit country. Access to education remains a key concern with official data showing a Net Enrolment Rate (NER) of only 26.7 percent (data as of 2014). Some key barriers to education include widespread poverty, low education levels amongst heads of households, late age of a child entering school, a high percentage of single-parent households (often female-headed) with low income opportunities and wide prevalence of physically remote schools. Overall, girls face greater obstacles to enrolment and are at a higher risk of not completing basic education. Women (65 percent) are more likely to be illiterate than men (41 percent). In order to advance Liberia's objective of gender equality, the Government has adopted the "National Girls Education Policy" (2011).
10. Access to education deteriorated further in 2014 during the outbreak of Ebola Viral Disease (EVD), which resulted in the closure of schools across the country. Albeit schools have reopened since then, many households have kept their children out of school in order to enter the labour force and support the economic brunt of the household.
11. According to the Demographic and Health Survey 2013³, malnutrition is a key public health and socio-economic concern in Liberia. It severely affects educational performance and human capital development of the country. Children who suffer from severe acute malnutrition are at 5 – 20 times higher risk of death than well-nourished children. A third (33 percent) of Liberian children suffer from chronic malnutrition which can reduce a child's chance of survival and if survived, they will never reach their intellectual potential as a result of stunted growth and impaired cognitive development, depriving them, and the developing nation, of reaching its optimum development.
12. School feeding is the biggest unconditional social safety net programme in Liberia. WFP's initial target of 127,000 children was increased to 300,000 children during the Ebola period. WFP aims at strengthening social safety nets through school feeding and nutrition support, as well as developing government capacity for sustainable management of social safety net programmes. The school feeding programme is implemented through provision of food to pre-primary and primary school children under two modalities: daily in-school meal for all students; and monthly take-home-ration for girls in grades 4, 5 & 6. It also includes capacity development and augmentation support to the government for an eventual handover of school feeding in line with the National School Feeding Policy adopted by the government in 2013. The latter was developed upon a series of consultations between the Government of Liberia/MoE, WFP, UNICEF and other partners.

3.2. Subject of the evaluation

The Government of Liberia (MoE) has carried out a school meals programme in food insecure regions of Liberia since 1969 in order to encourage learning and student enrolment. Interrupted for 14 years, due to the civil war, the school feeding programme was re-introduced in 2009. By 2016, the number of children receiving school meals had grown to nearly 300,000 in primary schools in Liberia.

13. To pursue greater national ownership and sustainability of the programme, MoE, with support from WFP, has developed the National School Feeding Policy which envisions the Government to take over-gradually, starting with 25 percent ownership by 2014-2015 academic year.
14. WFP provides regular hot mid-day meals in public and community primary and pre-primary schools. Primary school children receive a lunch of 169 grams comprising cereals, pulses, fortified vegetable oil and iodized salt to provide 30 percent of the recommended daily energy intake. Meals are provided to every school day, for a total of 180 days a year. In addition to providing school lunch, WFP is engaged in capacity development activities to enhance the capacity of the government to sustainably expand and manage the school meals programme. The activities include training,

³See, <https://dhsprogram.com/pubs/pdf/FR291/FR291.pdf>

equipment support, south to south learning initiatives, training for school administration in School Health, and nutrition education in primary school. WFP has also supported the government to develop of a number of policy documents including the School Feeding policy, the draft School gardening curriculum and a code of ethics for the management of the school meals. Currently, WFP is piloting Home Grown School Feeding in one of the counties (See Annex 1: The SF Policy, Code of Conduct and draft School Feeding Curriculum).

15. WFP and MoE have drafted a joint Plan of Action (JPA) as well as hold regular coordination meetings at central and local levels. At the county level, WFP works with county-level education officials. School Management Committees have been established in each school and are in charge of day-to-day implementation of activities of school feeding programme. The activities are monitored as part of WFP's regular monitoring and through joint monitoring missions with MoE (See Annex 2: Copies of 3 JPAs signed with MoE).
16. McGovern-Dole is one of the longest-standing donors to the SFP in Liberia.. There has been a number of alterations to the original grant agreement. Over the implementation period, one of the partners (Mary's meals) took over one of the 10 counties (Bomi) that WFP was covering. While there was reduction in counties (from 10 to 9) the number of students supported remained unchanged.
17. Notably, during the recent outbreak of the Ebola crisis, all schools were closed for 10 months necessitating WFP (in consultation with MoE and the donor) to divert all the food stock balance to the emergency response. WFP anticipated that there was going to be shortage of food for school feeding upon resumption of schools, as such approached USSAID-FFP with request to fill the gap. After the Ebola crisis, the new MoE administration further closed the schools to ensure alignment to the standard academic calendar. The fluctuating school calendar, and the slow pace of students returning to school accumulated sizable quantities of food that needed to be utilized before expiration dates. WFP, in consultation with MoE and the donors, increased the number of students under the SFP to 300,000.
18. Other than providing school meals, WFP provides trainings such as in the area of food preparation and storage. The objectives of the programme are highlighted in chapter 4 and in log frame (See Annex 3: log or results framework).

4. Evaluation Approach

4.1 Scope

- The evaluation concentrates on MGD-supported WFP School feeding activities implemented from 2013 to 2016 in 10 counties of Liberia. The evaluation will use the internationally agreed criteria of relevance, effectiveness, efficiency, sustainability and impact. It will assess the impact of the program against programme objectives concurring with WFP-USDA term agreement (See Annex 4 for list of objectives).
19. The evaluation will not cover WFP's accountability for literacy results but will document the trends in literacy achievement from students in program schools and non-program schools, using available national data aligned with WFP's commitment to using nationally available data and systems. National reports produced by MOE-IMIS⁴ will therefore be used. The evaluation will take into consideration that school feeding programme in Liberia is a multi-donor initiative.

4.2 Evaluation Criteria and Questions

20. **Evaluation Criteria:** The evaluation will apply the international evaluation criteria of Relevance, Effectiveness, Efficiency, Impact and Sustainability. Gender Equality and the Empowerment of women (GEEW) should be mainstreamed throughout the evaluation period. The evaluation team is

⁴ MOE-IMIS is the Government's recognized source of numeracy and literacy data.

expected to use sex-disaggregated data and involve beneficiaries and targeted groups in the data gathering and analysis. Overall, the team is expected to drive a gender-response evaluation.

21. **Evaluation Questions:** Allied to the evaluation criteria, the evaluation will address the following key questions, which will be further developed by the evaluation team.
22. **During the inception phase.** Collectively, the questions aim at highlighting the key lessons and performance of the WFP's McGovern-Dole International Food for Education and Child Nutrition Program support (2013-2016), which could inform future strategic and operational decisions.

Criteria	Evaluation Questions
Relevance	<p>Areas for analysis will include the extent to which the objectives, targeting, choice of activities and of transfer modalities (gender-lens approach will be cross-cutting throughout each criteria):</p> <ul style="list-style-type: none"> ▪ Were appropriate to the needs of the target population; ▪ Were aligned with relevant stated national policies, including sector policies and strategies and seek complementarity with the interventions of relevant humanitarian and development partners ▪ Were aligned with WFP strategies, policies and normative guidance ▪ Were aligned with partner UN agency and donor policies and priorities
Effectiveness	<ul style="list-style-type: none"> ▪ Has the SFP achieved its stated objectives, outputs, and outcomes? ▪ What were the major factors (Both internal and external) influencing the achievement or non-achievement of the outputs, outcomes/objectives of the intervention? ▪ Why and how did the operation produce the observed results? The evaluation should generate insights into the main internal and external factors that caused the observed changes and affected how results were achieved. The inquiry is likely to focus, amongst others: <ul style="list-style-type: none"> ➢ Internally (factors within WFP's control): the processes, systems and tools in place to support the operation design, implementation, monitoring/evaluation and reporting; the governance structure and institutional arrangements (including issues related to staffing, capacity and technical backstopping from RB/HQ); the partnership and coordination arrangements; ➢ Externally (factors outside WFP's control): the external operating environment; the funding climate; external incentives and pressures; etc.
Efficiency	<ul style="list-style-type: none"> ▪ Were activities cost-efficient? ▪ Were the activities implemented in the most efficient way compared to alternatives? ▪ What were the external and internal factors influencing efficiency of the program (attainment of the planned outputs, cost factors, logistics and pipeline performance)?
Impact	<ul style="list-style-type: none"> ▪ What were the short- and medium term effects of the programme on beneficiaries' lives? ▪ Are assisted schools moving in the right direction of improving education outcomes and sustaining school feeding? ▪ Did any negative effects occur for beneficiaries?

	<ul style="list-style-type: none"> ▪ What were the gender-specific impacts, especially regarding enrolment and attendance? ▪ What are the main drivers of positive impacts? (Partnerships, capacity, ownership, etc.) ▪ What were the intended and unintended impacts of the programme
Sustainability	<ul style="list-style-type: none"> ▪ To what extent is the country taking ownership of the programme? (e.g. demonstrated commitment and contribution to the programme); ▪ What is the national readiness to implement the programme? E.g. demonstrated capacity at central and sub-national levels to manage the programme?

4.3 Data Availability

23. The following are the main sources of data:

- Baseline survey and head-count reports
- WFP Strategic Results framework
- Liberia Country Programme 200395 (2013-2017) project document & log frame
- WFP School Feeding Handbook
- WFP School Feeding Policy
- Standard Project Reports (SPRs)
- M&E monthly monitoring reports
- Concept note for Home Grown School Feeding
- USDA- WFP Agreement FFE-615-2013/036-00-B and amendments
- Government of Liberia education-related policies and strategies
- WFP and MOE JPA (2013-16)
- IMIS and MOE annual reports

24. Concerning the quality of data and information, the evaluation team should:

- a. Assess data availability and reliability as part of the inception phase expanding on the information provided in section 4.3. This assessment will inform the data collection.
- b. Systematically check accuracy, consistency and validity of collected data and information and acknowledge any limitations/caveats in drawing conclusions using the data.

4.4 Methodology

25. The methodology will be designed by the evaluation team during the inception phase. It should:

- Employ the relevant evaluation criteria above [relevance, efficiency, effectiveness, impact and sustainability]
- Demonstrate impartiality and lack of biases by relying on a cross-section of information sources (stakeholder groups, including beneficiaries, etc.) The selection of field visit sites will also need to demonstrate impartiality (see section 26).
- Using mixed methods (quantitative, qualitative, participatory etc.) to ensure triangulation of information through a variety of means.
- Apply an evaluation matrix geared towards addressing the key evaluation questions taking into account the data availability challenges, the budget and timing constraints;
- Ensure through the use of mixed methods that women, girls, men and boys from different stakeholders groups participate and that their different voices are heard and used;
- Mainstream gender equality and women's empowerment, as above; ensure sex-disaggregated data is provided and analysed.

26. The evaluation team is expected to elaborate appropriate sampling methods for collecting primary quantitative and qualitative data (sex/gender disaggregated). The evaluation team will draw a

statistically representative sample from the sample frame consisting of the total number of schools 1230 spread across the 10 counties (Bomi, Grant Bassa, Gbarpolu, River Cess, Sinoe, River Gee, Nimba, Grande Gedeh, Maryland, Grand Kru).

27. The Evaluation will take a programme theory approach based on the results framework, and draw on the existing documented data.
28. The evaluation will use mixed methods and triangulate information from different methods and sources to enhance the reliability of findings. In particular, the evaluation will combine qualitative and quantitative approaches to collect field-level data and information from the 10 counties. Separate questionnaires will be applied to the different primary sources of information, focusing on infrastructure, staff, enrolment and attendance, exam scores, completion rates and community involvement in the programme.
29. The qualitative component of the evaluation will use participatory methods where relevant to highlight lessons learned and case studies representative of the interventions. In particular, the methodology will involve focus group discussions with head teachers, school management committee members, education officials, pupils and key informants drawn from education stakeholders. This component will employ relevant interview schedules as a key data collection method which will be collated to provide general impressions of the programme.
30. Fieldwork will be based on the baseline, head count and outcome monitoring. Where possible and relevant, before/after comparison will be done through design of comparable sampling strategy.
31. The following mechanisms for independence and impartiality will be employed: use of an Evaluation Committee and an Evaluation Reference Group and referring to the Technical Note on Independence and Impartiality for guidance.
32. The main risk is unavailability of data and reports on some of the indicators of **McGovern -Dole indicators** such as “Improved attentiveness of students in supported schools”. To mitigate this gap, the Evaluation will have to collect data on these McGovern-Dole indicators which were not captured in the school feeding log frame.

4.5 Quality Assurance

33. WFP’s Decentralized Evaluation Quality Assurance System (DEQAS) defines the quality standards expected from this evaluation and sets out processes with in-built steps for Quality Assurance, Templates for evaluation products and Checklists for their review. DEQAS is closely aligned to the WFP’s evaluation quality assurance system (EQAS) and is based on the UNEG norms and standards and good practice of the international evaluation community and aims to ensure that the evaluation process and products conform to best practice.
34. DEQAS will be systematically applied to this evaluation. The WFP Evaluation Manager will be responsible for ensuring that the evaluation progresses as per the DEQAS Step by Step Process Guide and for conducting a rigorous quality control of the evaluation products ahead of their finalization.
35. WFP has developed a set of Quality Assurance Checklists for its decentralized evaluations. This includes Checklists for feedback on quality for each of the evaluation products. The relevant Checklist will be applied at each stage, to ensure the quality of the evaluation process and outputs.
36. In addition, to enhance the quality and credibility of this evaluation, an external reviewer directly managed by WFP’s Office of Evaluation in Headquarter will provide:
 - a) systematic feedback on the quality of the draft inception and evaluation reports; and
 - b) Recommendations on how to improve the quality of the evaluation.
37. This quality assurance process does not interfere with the views and independence of the evaluation team, but ensures the report provides the necessary evidence in a clear and convincing way and draws its conclusions on that basis.
38. The evaluation team will be required to ensure the quality of data (validity, consistency and accuracy) throughout the analytical and reporting phases. The evaluation team should be assured of the

accessibility of all relevant documentation within the provisions of the directive on disclosure of information. This is available in WFP's Directive (#CP2010/001) on Information Disclosure.

39. All final evaluation reports will be subjected to a post hoc quality assessment by an independent entity through a process that is managed by OEV. The overall rating category of the reports will be made public alongside the evaluation reports.

5. Phases and Deliverables

The evaluation will proceed through five phases. The evaluation schedule annex provides a detailed breakdown of the proposed timeline for each phase over the full timeframe. A summary of the deliverables and deadlines for each phase are as follows:

Figure 1: Summary Process Map



40. **Preparation phase (September –October 2016):** The evaluation manager will draft the TOR, select the evaluation team and contract the company for the management and conduct of the evaluation. The TOR will be shared with USDA for comments and/ or inputs.
41. **Inception phase (October 2016):** This phase ensures that plan, expectations and deliverables are agreed/understood by the evaluation team. The inception phase will include a desk review of secondary data and initial stakeholders' consultation. The inception report will be shared with USDA for their comments.
42. **Evaluation phase (10 January – 15 February 2017):** The fieldwork will span over a period of one month and will include visits to project sites and primary and secondary data collection from local stakeholders (disaggregated). A debriefing session will be held upon completion of the field work.
43. **Reporting phase (January 2017):** The evaluation team will analyse the sex/gender disaggregated data collected during the desk review and the field work, conduct additional consultations with beneficiaries and stakeholders, and draft the evaluation report. The draft evaluation report will be submitted to the evaluation manager for quality assurance. Stakeholders will be invited to provide comments, which will be recorded in a matrix by the evaluation manager and provided to the evaluation team for their consideration before report finalisation.
44. **Follow-up and dissemination phase:** The final evaluation report will be shared with the relevant stakeholders. The management responsible will respond to the evaluation recommendations by providing actions that will be taken to address each recommendation and estimated timelines for taking those actions. The evaluation report will also be subject to external post-hoc quality review to report independently on the quality, credibility and utility of the evaluation in line with evaluation norms and standards. The final evaluation report will be published on the WFP public website. Findings will be disseminated and lessons will be incorporated into other relevant lesson sharing systems.

1 Organization of the Evaluation

6.1 Evaluation Conduct

45. The evaluation team will conduct the evaluation under the direction of its team leader and in close communication with the independent evaluation manager appointed by WFP to manage the evaluation. The team will be hired following agreement with WFP on its composition and in line with the evaluation schedule.
46. The team members will not have been involved in the design or implementation of the subject of evaluation or have any other conflicts of interest. Further, they will act impartially and respect the code of conduct of the evaluation profession.

1.1 Team composition and competencies

47. The Team Leader should be a senior evaluator with at least 10 years of experience with demonstrated expertise in managing multidisciplinary and mixed quantitative and qualitative method evaluations, complemented with good understanding of School Meals programmes and additional significant experience in other development and management positions.
48. The Team leader will also have expertise in designing methodology and data collection tools and demonstrated experience in leading similar evaluations. She/he will also have leadership and communication skills, including a track record of excellent writing and presentation skills. Her/his primary responsibilities will be: i) defining the evaluation approach and methodology; ii) guiding and managing the team; iii) leading the evaluation mission and representing the evaluation team; iv) drafting and revising the inception report, the end of field work (i.e debriefing presentation and evaluation report in line with EQAS).
49. The team must include strong demonstrated knowledge of qualitative and quantitative data and statistical analysis. It should include both women and men and at least one team member should be familiar with WFP's Food-for-education (FFE) work and with the USDA M&E Policy.
50. The team will be multi-disciplinary and include an appropriate balance of expertise and practical knowledge in education, nutrition, food security, and gender expertise and capacity development.
51. All team members should have strong analytical and communication skills, evaluation experience and familiarity with Liberia or the Manu River Region Africa.
52. The team members will bring together a complementary combination of the technical expertise required and have a track record of written work on similar assignments.
53. Team members will: i) contribute to the methodology in their area of expertise based on a document review; ii) conduct field work; iii) participate in team meetings and meetings with stakeholders; iv) contribute to the drafting and revision of the evaluation products in their technical area(s).
54. All members of the evaluation team will abide by the Code of Conduct for evaluators (attached to individual contracts), ensuring they maintain impartiality and professionalism.

6.2 Security Considerations

55. Security clearance where required is to be obtained from WFP Liberia office.
 - As an 'independent supplier' of evaluation services to WFP, the evaluation company is responsible for ensuring the security of all persons contracted, including adequate arrangements for evacuation for medical or situational reasons. The consultants contracted by the evaluation company do not fall under the UN Department of Safety & Security (UNDSS) system for UN personnel.
 - Consultants hired independently are covered by the UN Department of Safety & Security (UNDSS) system for UN personnel which cover WFP staff and consultants contracted directly by WFP. Independent consultants must obtain UNDSS security clearance for travelling to be obtained from

designated duty station and complete the UN system's Basic and Advance Security in the Field courses in advance, print out their certificates and take them with them.⁵

56. However, to avoid any security incidents, the Evaluation Manager is requested to ensure that:

- The WFP CO registers the team members with the Security Officer on arrival in country and arranges a security briefing for them to gain an understanding of the security situation on the ground.
- The team members observe applicable UN security rules and regulations.

6. Roles and Responsibilities of Stakeholders

57. The Liberia Country Office:

- a- The Liberia country Office management (**Deputy Country Director**) will take responsibility to:
- Ensure an independent Evaluation Manager for the evaluation:
 - Compose the internal evaluation committee and the external evaluation reference group
 - Approve the final TOR, inception and evaluation reports.
 - Ensure the independence and impartiality of the evaluation at all stages, including establishment of an Evaluation Committee and of a Reference Group
 - Participate in discussions with the evaluation team on the evaluation design and the evaluation subject, its performance and results with the Evaluation Manager and the evaluation team
 - Organise and participate in two separate debriefings, one internal and one with external stakeholders
 - Oversee dissemination and follow-up processes, including the preparation of a Management Response to the evaluation recommendations

b. Evaluation Manager:

- Manages the evaluation process through all phases including drafting this TOR
- Ensure quality assurance mechanisms are operational
- Consolidate and share comments on draft TOR, inception and evaluation reports with the evaluation team
- Ensures expected use of quality assurance mechanisms (checklists, quality support etc.)
- Ensure that the team has access to all documentation and information necessary to the evaluation; facilitate the team's contacts with local stakeholders; set up meetings, field visits; provide logistic support during the fieldwork; and arrange for interpretation, if required.
- Organise security briefings for the evaluation team and provide any materials as required
- Chairs the External Reference Group meetings

- c. **An Internal Evaluation Committee** has been formed as part of ensuring the independence and impartiality of the evaluation. The membership includes M&E officer, evaluation manager, technical unit in charge of school feeding programme, Head of Programme; one staff each from finance and logistics unit. The key roles and responsibilities of this team, include providing input to evaluation process and commenting on evaluation products.

58. **An External Evaluation Reference group** has also been formed, with representation from USDA/FAS/FFP, Ministry of Education, Mary's meals', WFP Country Office and Regional Bureau

⁵ Field Courses: Basic <https://dss.un.org/bsitf/>; Advanced <http://dss.un.org/asitf>

and will review the evaluation products as further safeguard against bias and influence (See annex 5; External reference Group TOR)

59. The **Regional Bureau**: The RB management will be responsible to:

- Assign focal point for the evaluation.
- Participate in discussions with the evaluation team on the evaluation design and on the operation, its performance and results. In particular, the RB should participate in the evaluation debriefing and discussions with the evaluation manager and team, as required.
- Provide comments on the TORs, inception report and the evaluation report.

60. **Headquarters**: Some HQ divisions might, as relevant, be asked to discuss WFP strategies, policies or systems in their area of responsibility and to comment on the evaluation TOR and report.

61. **Other Stakeholders** (Government, NGOs, and UN agencies) will be identified for interviews by the evaluation team in addition to the list provided by WFP which will be based on the preliminary stakeholder analysis detailed in table 1. Government and USDA and other partners will provide inputs into the draft evaluation report before its finalized.

62. **The Office of Evaluation (OEV)**: OEV will advise the Evaluation Manager and provide support to the evaluation process where appropriate. It is responsible to provide access to independent quality support mechanisms reviewing draft inception and evaluation reports from an evaluation perspective. It also ensure a help desk function upon request from the Regional Bureaus.

7. Communication and budget

8.1 Communication

63. To enhance the learning from this evaluation, the evaluation team should place emphasis on transparent and open communication with key stakeholders. These may for example take place by ensuring a clear agreement on channels and frequency of communication with and between key stakeholders.

64. Communication with evaluation team and stakeholders should go through the Evaluation manager.

65. As part of the international standards for evaluation, WFP requires that all evaluations are made publicly available. Following the approval of the final evaluation report, dissemination will be broad and workshops will be conducted both internally and with partners, looking at the recommendations and the way forward. Specifically:

- WFP Liberia Country Office will organize an internal workshop to discuss evaluation findings and recommendations, where the consultant will present the key findings;
- WFP, in collaboration with the Ministry of Education, a workshop targeting relevant external audiences, where the consultant will present the key findings.
- WFP will discuss the report with USDA and disseminate the findings and recommendations in various ways, including through discussions with WFP senior management and staff as well as with the key partners including the Ministry of Education, non-governmental partners and UN agencies.

8.2 Budget

d. **Budget**: The evaluation will follow WFP standard procurement procedures. Budgets will be proposed by the applicants/evaluation companies.

8. ANNEXES

1.2 *Annex 1: The School Feeding Policy, Code of Conduct and draft School Feeding Curriculum*

1.3 *Annex 2: Copies of 3 JPAs signed with MoE*

Annex 3: Results framework /Log frame

Annex 4: SFP Objectives as per agreed WFP-USDA/MGD grant terms.

- Contribution to Feed the Future (U.S. Government's global hunger and food security initiative)
- Improved literacy of school –age children
- Increased capacity of Government institutions
- Improved policy and regulatory framework
- Improved quality of literacy instruction
- Increased skills and knowledge of teachers
- Increased skills and knowledge of school administrators
- Improved attentiveness of students in supported schools
- More consistent teacher attendance
- Reduced short term hunger
- Increased access to food (School Feeding)
- Improved student attendance
- Increased use of health and dietary practices
- Increased engagement of local organizations and community groups
- Increased knowledge of safe food prep and storage practises
- Increased access to requisite food preparation, storage tools and equipment
- Increased student enrolment
- Increased community understanding of education benefits
- Increased Economic and Cultural incentives (or Decreased Disincentives)
- Reduced health-related absence
- Improved knowledge of health and hygiene practise
- Increased knowledge of nutrition

1.4 *Annex 5: Evaluation Schedule*

	Phases, Deliverables and Timeline	Key Dates
	Phase 1 - Preparation	
	Desk review, first draft of TOR and quality assurance	September-October 2016
	Circulation of TOR and review to Internal Evaluation committee and USDA	
	Identification of an independent evaluation manager	
	Establish External Reference Group	
	Identification and recruitment of evaluation team	
	Final TOR	
	Phase 2 - Inception	

	Briefing core team	November 2016
	Review documents and draft inception report including methodology.	
	Submit draft inception report to Evaluation manager who in turn shares with internal and external reference group and USDA	
	Quality assurance and feedback	
	Revise inception report	
	Submit revised inception report to Evaluation manager who in turn shares with internal and external reference group and USDA	
	Sharing of inception report with stakeholders for information	
Phase 3 - Evaluation Mission		
	Briefing	10 January – 15 February 2017
	Field work	
	Debriefing	
	Aide memoire/In-country Debriefing	
Phase 4 - Reporting		
	Draft evaluation report	15 February- 28 February 2017
	Submit Draft evaluation report to Evaluation manager	
	Quality feedback	
	Revise evaluation report	
	Submit revised evaluation report to Evaluation manager	
	Share evaluation report with stakeholders internal and external reference group for comments	
	Consolidate comments	
	Revise evaluation report	
	Submit revised evaluation report to Evaluation manager	
	Circulate the Summary Evaluation Report to internal and external reference group for comments	
	Consolidate comments	
	Revise the Summary Evaluation report	
	Submit final evaluation report to WFP, USDA, GOK and other stakeholder	
Phase 5 Dissemination and follow-up		01 March- 10 March 2017

Annex 7: Membership of the evaluation reference group (ERG)

ERG Terms of Reference

Context

WFP Liberia is commissioning an evaluation of the School Feeding programme for the period of 2013-2016. The proposed evaluation is part of the Evaluation Plan agreed jointly by WFP and USDA/ McGovern Dole.

Purpose

The overall Purpose of the ERG is to support a credible, transparent, impartial and quality evaluation process in accordance with WFP Evaluation Policy 2016-2021. ERG member's review and comment on evaluation TOR and deliverables. The ERG members act as experts in an advisory capacity, without management responsibilities. Responsibility for approval of evaluation products rests with the Country Director/Deputy Country Director as Chair of the Evaluation Committee.

Membership

Stakeholder's technical experts in the school feeding include the Ministry of Education (MOE), USDA McGovern –Dole (the donor), M&E plus relevant WFP Country office and Regional Bureau units.

Main tasks

The table below shows the main ERG tasks, the estimated time required in each phase and the approximate dates. The actual dates will be known during the inception phase when the final schedule is agreed with the evaluation team.

ERG members' responsibility by evaluation phase	Estimated Required time	Approximate Dates
<u>Phase 2: Preparation phase</u> <ul style="list-style-type: none">Review ToR and provide feedback ensuring that the ToR will lead to a useful evaluation output and provide any additional key background information to inform the finalization of the TOR.Identify sources of documents useful to the evaluation team		October - November 2016
Attend ERG meeting		Continuous
<u>Phase 3: Inception Phase</u> <ul style="list-style-type: none">Meet with evaluation team (together and/or individual members). The ERG is a source of information for the evaluation, providing guidance on how the evaluation team can design a realistic/practical, relevant and useful Evaluation.Assist in identifying and contacting key stakeholders to be interviewed, identifying and accessing key documentation and data sources, and identifying appropriate field sites. This is an important in their role in Safeguarding against bias.Review and comment on the draft Inception		10-15 January 2017
<u>Phase 4: Data collection and analysis</u> <ul style="list-style-type: none">Act as key informant during the data collection stage.Assist the evaluation team by providing sources of information and facilitating data access.		20 January – 15 February 2017

<ul style="list-style-type: none"> Attend the validation /debriefing meeting conducted by the evaluation team at the end of the fieldwork. 		
<p><u>Phase 5: Report</u></p> <ul style="list-style-type: none"> Review and comment on the draft evaluation report, specifically focusing on accuracy and on quality and comprehensiveness of evidence base against which the findings are presented, and conclusions and recommendations are made. Particular attention should be given to ensuring that the recommendations are relevant, targeted, realistic and actionable. The ERG must respect the decision of the independent evaluators regarding the extent of incorporation of feedback provided to them by the ERG and other stakeholders, as long as there is sufficient transparency in how they have addressed the feedback, including clear rationale for any feedback that has not been 		15 February- 20 February 2017
<p><u>Phase 6: Disseminate and Follow-up</u></p> <ul style="list-style-type: none"> Disseminate final report internally and on websites of ERG members as relevant; Share as relevant evaluation findings within respective units, organizations, networks and at key events; Provide input to management response and its Implementation (as appropriate). 		21 February- 28 February 2017

ANNEX II

COMPANY PROFILE

Section 1: Company Details and General Information

1. Name of Company/Institution (full legal name):

2. Street Address:

3. P.O. Box and Mailing Address:

Postal Code:

City:

Country:

4. Tel (include country and area codes):

5. Fax (include country and area codes):

6. Email:

7. WWW Address:

8. Contact Name and Title:

9. Ownership and Parent Company (full legal name):

10. Name and Address of Subsidiaries, Associates and/or Overseas Representative(s) (attach a separate sheet if necessary):

11a. Nature of Business (please tick one box in each section):

Manufacturer: ☐ Trader: ☐ Authorised .Agent: ☐ Consulting Company: ☐ Other (specify):

11b. Type of Business

Corporate/Limited: ☐ Partnership: ☐ Gov. Agency: ☐ University: ☐ Other (specify):

12. Number of Full-time Employees:

Year Established (under the name shown in 1): 13.

14. Licence N°/State Where Registered:

15. VAT N°/Tax ID:

16. Technical Documents Available in:

English ☐ French ☐ Spanish ☐ Russian ☐ Arabic ☐ Chinese ☐ Other (specify)

17. Working Languages:

English ☐ French ☐ Spanish ☐ Russian ☐ Arabic ☐ Chinese ☐ Other (specify) ☐

Section 2: Financial Information

18. Annual Value of Total Income for the Last 3 Financial Years:

Year ____: USD _____ million Year ____: USD _____ million Year ____: USD _____ million

19. Annual Value of Export Sales for the last 3 Financial Years:

Year ____: USD _____ million Year ____: USD _____ million Year ____: USD _____ million

20. Bank Name:

Swift/BIC Address:

Address:

21. Bank Account N°:

Account Name:

22. Please provide a copy of the company's annual or audited financial report of the last 3 years.
If available, please provide credit rating by Dun and Bradstreet or equivalent (specify which).

Section 3: Technical Capability and Information on Goods / Services Offered

23. If available, Quality Assurance Certification, e.g. ISO 9000 or National Standard. Provide a copy of your latest certificate.

24. International Offices/Representation (countries where the company has local offices/representation):

25. Select from below list the type of your activity. Please cross the box located in front of the name of the desired type of activity/supplies

<input type="checkbox"/>	Food & Nutrition consultancy	<input type="checkbox"/>	Camping Equipment
<input type="checkbox"/>	Food Processing Machinery	<input type="checkbox"/>	Medical supplies & Consultancy
<input type="checkbox"/>	Packaging Materials & equipment	<input type="checkbox"/>	Office Administration related services
<input type="checkbox"/>	Warehouses and warehouse equipment	<input type="checkbox"/>	Media & Advocacy Consulting and training
<input type="checkbox"/>	Light Vehicles and spare parts	<input type="checkbox"/>	Legal Services & Consultancy
<input type="checkbox"/>	Heavy vehicles and spare parts	<input type="checkbox"/>	Agricultural tools Machines and Materials
<input type="checkbox"/>	Road cleaning & Engineering equipment	<input type="checkbox"/>	Ballistic Protection and security equipment
<input type="checkbox"/>	services & consultancy	<input type="checkbox"/>	
<input type="checkbox"/>	Transportation services	<input type="checkbox"/>	Port and railway equipment and services
<input type="checkbox"/>	Shipping Services	<input type="checkbox"/>	Office furniture and household items
<input type="checkbox"/>	Fuel&Oil	<input type="checkbox"/>	Banking and investment services & consultancy
<input type="checkbox"/>		<input type="checkbox"/>	Books and Periodicals
<input type="checkbox"/>	Fuel storage & Pumps	<input type="checkbox"/>	Publishing Services & Consultancy
<input type="checkbox"/>	IT equipment	<input type="checkbox"/>	Postal and courier services
<input type="checkbox"/>	IT Consultancy	<input type="checkbox"/>	Miscellaneous
<input type="checkbox"/>	TC equipment	<input type="checkbox"/>	Stationary & Paper
<input type="checkbox"/>	TC Consultancy	<input type="checkbox"/>	Office consumables
<input type="checkbox"/>	Software & Software/WEB design & training	<input type="checkbox"/>	Other
<input type="checkbox"/>	General electronics and photo equipment & Services	<input type="checkbox"/>	

Section 4: Experience

26. Recent contracts with the UN (see Note1) and/or other international aid organisations (attach a separate sheet if necessary).

Please provide documentary evidence of such contracts (is?) required, e.g. copies of purchase orders.

<u>Organisation</u>	<u>Value</u>	<u>Year</u>	<u>Goods/Services Supplied</u>	<u>Destination Country</u>
_____ USD	_____	_____	_____	_____
_____ USD	_____	_____	_____	_____
_____ USD	_____	_____	_____	_____

_____ USD _____

_____ USD _____

27. To which countries has your company exported and/or managed projects over the last 3 years? Please list export markets, in particular development countries.

Section 5: Other

28. Does your company have a written statement of its environmental policy (see Note2) ? If yes, ☐ please provide a copy. Yes No

29. Is your company Electronic Data Interchange enabled? ☐ Yes No

30. Please list any disputes your company has been involved in with UN Organisations over the last 3 years:

31. List any national or international trade or professional Organisations of which your company is a member:

32. Certification:

I, the undersigned, warrant that the information provided in this form is correct, and in the event of changes details will be provided as soon as possible.

Name

Functional Title

Signature

Date

ANNEX III

CONTRACTS FOR THE PROVISION OF GOODS AND SERVICES

CONTRACTS FOR THE PROVISION OF GOODS AND SERVICES REV.:

1. **LEGAL STATUS OF THE PARTIES:** The United Nations and the Contractor shall also each be referred to as a “Party” hereunder, and:
- 1.1 Pursuant, *inter alia*, to the Charter of the United Nations and the Convention on the Privileges and Immunities of the United Nations, the United Nations, including its subsidiary organs, has full juridical personality and enjoys such privileges and immunities as are necessary for the independent fulfillment of its purposes.
- 1.2 The Contractor shall have the legal status of an independent contractor *vis-à-vis* the United Nations, and nothing contained in or relating to the Contract shall be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent. The officials, representatives, employees, or subcontractors of each of the Parties shall not be considered in any respect as being the employees or agents of the other Party, and each Party shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.
2. **RESPONSIBILITY FOR EMPLOYEES:** To the extent that the Contract involves the provision of any services to the United Nations by the Contractor’s officials, employees, agents, servants, subcontractors and other representatives (collectively, the Contractor’s “personnel”), the following provisions shall apply:
- 2.1 The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform work under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.
- 2.2 Such Contractor personnel shall be professionally qualified and, if required to work with officials or staff of the United Nations, shall be able to do so effectively. The qualifications of any personnel whom the Contractor may assign or may propose to assign to perform any obligations under the Contract shall be substantially the same, or better, as the qualifications of any personnel originally proposed by the Contractor.
- 2.3 At the option of and in the sole discretion of the United Nations:
- 2.3.1 the qualifications of personnel proposed by the Contractor (*e.g.*, a curriculum vitae) may be reviewed by the United Nations prior to such personnel’s performing any obligations under the Contract;
- 2.3.2 any personnel proposed by the Contractor to perform obligations under the Contract may be interviewed by qualified staff or officials of the United Nations prior to such personnel’s performing any obligations under the Contract; and,
- 2.3.3 in cases in which, pursuant to Article 2.3.1 or 2.3.2, above, the United Nations has reviewed the qualifications of such Contractor’s personnel, the United Nations may reasonably refuse to accept any such personnel.
- 2.4 Requirements specified in the Contract regarding the number or qualifications of the Contractor’s personnel may change during the course of performance of the Contract. Any such change shall be made only following written notice of such proposed change and upon written agreement between the Parties regarding such change, subject to the following:
- 2.4.1 The United Nations may, at any time, request, in writing, the withdrawal or replacement of any of the Contractor’s personnel, and such request shall not be unreasonably refused by the Contractor.
- 2.4.2 Any of the Contractor’s personnel assigned to perform obligations under the Contract shall not be withdrawn or replaced without the prior written consent of the United Nations, which shall not be unreasonably withheld.
- 2.4.3 The withdrawal or replacement of the Contractor’s personnel shall be carried out as quickly as

possible and in a manner that will not adversely affect the performance of obligations under the Contract.

2.4.4 All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.

2.4.5 Any request by the United Nations for the withdrawal or replacement of the Contractor's personnel shall not be considered to be a termination, in whole or in part, of the Contract, and the United Nations shall not bear any liability in respect of such withdrawn or replaced personnel.

2.4.6 If a request for the withdrawal or replacement of the Contractor's personnel is *not* based upon a default by or failure on the part of the Contractor to perform its obligations in accordance with the Contract, the misconduct of the personnel, or the inability of such personnel to reasonably work together with United Nations officials and staff, then the Contractor shall not be liable by reason of any such request for the withdrawal or replacement of the Contractor's personnel for any delay in the performance by the Contractor of its obligations under the Contract that is substantially the result of such personnel's being withdrawn or replaced.

2.5 Nothing in Articles 2.2, 2.3 and 2.4, above, shall be construed to create any obligations on the part of the United

Nations with respect to the Contractor's personnel assigned to perform work under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

2.6 The Contractor shall be responsible for requiring that all personnel assigned by it to perform any obligations under the Contract and who may have access to any premises or other property of the United Nations shall:

2.6.1 undergo or comply with security screening requirements made known to the Contractor by the United Nations, including but not limited to, a review of any criminal history;

2.6.2 when within United Nations premises or on United Nations property, display such identification as may be approved and furnished by the United Nations security officials, and that upon the withdrawal or replacement of any such personnel or upon termination or completion of the Contract, such personnel shall immediately return any such identification to the United Nations for cancellation.

2.7 Within one working day after learning that any of Contractor's personnel who have access to any United Nations premises have been charged by law enforcement authorities with an offense other than a minor traffic offense, the Contractor shall provide written notice to inform the United Nations about the particulars of the charges then known and shall continue to inform the United Nations concerning all substantial developments regarding the disposition of such charges.

2.8 All operations of the Contractor, including without limitation, storage of equipment, materials, supplies and parts, within United Nations premises or on United Nations property shall be confined to areas authorized or approved by the United Nations. The Contractor's personnel shall not enter or pass through and shall not store or dispose of any of its equipment or materials in any areas within United Nations premises or on United Nations property without appropriate authorization from the United Nations.

3. ASSIGNMENT:

3.1 Except as provided in Article 3.2, below, the Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the UN. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the United Nations. Except as permitted with respect to any approved subcontractors, the Contractor shall not delegate any of its obligations under this Contract, except with the prior written consent of the UN. Any such unauthorized delegation, or attempt to do so, shall not be binding on the United Nations.

3.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor's operations, *provided that:*

3.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and,*

3.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor's assets or ownership interests; *and*,

3.2.3 the Contractor promptly notifies the United Nations about such assignment or transfer at the earliest opportunity; *and*,

3.2.4 the assignee or transferee agrees in writing to be bound by all of the terms and conditions of the Contract, and such writing is promptly provided to the United Nations following the assignment or transfer.

4. SUBCONTRACTING: 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 the United Nations. The United Nations shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the United Nations reasonably considers is not qualified to perform obligations under the Contract. The United Nations shall have the right to require any subcontractor's removal from United Nations premises without having to give any justification therefor. Any such rejection or request for removal shall not, in and of itself, 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, and 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.

4. PURCHASE OF GOODS: To the extent that the Contract involves any purchase of goods, whether in whole or in part, and unless specifically stated otherwise in the Contract, the following conditions shall apply to any purchases of goods under the Contract:

5.1 DELIVERY OF GOODS: The Contractor shall hand over or make available the goods, and the United Nations shall receive the goods, at the place for the delivery of the goods and within the time for delivery of the goods specified in the Contract. The Contractor shall provide to the United Nations such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified in the Contract. Unless otherwise stated in the Contract (including, but not limited to, in any "INCOTERM" or similar trade term), the entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to the United Nations in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by the United Nations.

5.2 INSPECTION OF THE GOODS: If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify the United Nations when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, the United Nations or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract. All reasonable facilities and assistance, including, but not limited to, access to drawings and production data, shall be furnished to the United Nations or its designated inspection agents at no charge therefor. Neither the carrying out of any inspections of the goods nor any failure to undertake any such inspections shall relieve the Contractor of any of its warranties or the performance of any obligations under the Contract.

5.3 PACKAGING OF THE GOODS: The Contractor shall package the goods for delivery in accordance with the highest standards of export packaging for the type and quantities and modes of transport of the goods. The

goods shall be packed and marked in a proper manner in accordance with the instructions stipulated in the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law or by the transporters and manufacturers of the goods. The packing, in particular, shall mark the Contract or Purchase Order number and any other identification information provided by the United Nations as well as such other information as is necessary for the correct handling and safe delivery of the goods. Unless otherwise specified in the Contract, the Contractor shall have no right to any return of the packing materials.

5.4 TRANSPORTATION & FREIGHT: Unless otherwise specified in the Contract (including, but not limited to, in any “INCOTERM” or similar trade term), the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that the United Nations receives all necessary transport documents in a timely manner so as to enable the United Nations to take delivery of the goods in accordance with the requirements of the Contract.

5.5 WARRANTIES: Unless otherwise specified in the Contract, in addition to and without limiting any other warranties, remedies or rights of the United Nations stated in or arising under the Contract, the Contractor warrants and represents that:

5.5.1 The goods, including all packaging and packing thereof, conform to the specifications of the Contract, are fit for the purposes for which such goods are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

5.5.2 If the Contractor is not the original manufacturer of the goods, the Contractor shall provide the United Nations with the benefit of all manufacturers’ warranties in addition to any other warranties required to be provided under the Contract;

5.5.3 The goods are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

5.5.4 The goods are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

5.5.5 The goods are new and unused;

5.5.6 All warranties will remain fully valid following any delivery of the goods and for a period of not less than one (1) year following acceptance of the goods by the United Nations in accordance with the Contract;

5.5.7 During any period in which the Contractor’s warranties are effective, upon notice by the United Nations that the goods do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense correct such non-conformities or, in case of its inability to do so, replace the defective goods with goods of the same or better quality or, at its own cost, remove the defective goods and fully reimburse the United Nations for the purchase price paid for the defective goods; and,

5.5.8 The Contractor shall remain responsive to the needs of the United Nations for any services that may be required in connection with any of the Contractor’s warranties under the Contract.

5.6 ACCEPTANCE OF GOODS: Under no circumstances shall the United Nations be required to accept any goods that do not conform to the specifications or requirements of the Contract. The United Nations may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall the United Nations be obligated to accept any goods unless and until the United Nations has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that the United Nations shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until the United Nations in fact provides such written acceptance. In no case shall payment by the United Nations in and of itself constitute acceptance of the goods.

5.7 REJECTION OF GOODS: Notwithstanding any other rights of, or remedies available to the United Nations under the Contract, in case any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, the United Nations, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from the United Nations of such rejection or refusal to accept the goods, the Contractor shall, in sole option of the United Nations:

5.7.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by the United Nations; *or*,

5.7.2 repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; *or*,

5.7.3 replace the goods with goods of equal or better quality; *and*,

5.7.4 pay all costs relating to the repair or return of the defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to the United Nations.

5.8 In the event that the United Nations elects to return any of the goods for the reasons specified in Article 5.7, above, the United Nations may procure the goods from another source. In addition to any other rights or remedies available to the United Nations under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, *inter alia*, the costs of engaging in such procurement, and the United Nations shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

5.9 TITLE: The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to the United Nations upon delivery of the goods and their acceptance by the United Nations in accordance with the requirements of the Contract.

5.10 EXPORT LICENSING: The Contractor shall be responsible for obtaining any export license required with respect to the goods, products, or technologies, including software, sold, delivered, licensed or otherwise provided to the United Nations under the Contract. The Contractor shall procure any such export license in an expeditious manner. Subject to and without any waiver of the privileges and immunities of the United Nations, the United Nations shall lend the Contractor all reasonable assistance required for obtaining any such export license. Should any Governmental entity refuse, delay or hinder the Contractor's ability to obtain any such export license, the Contractor shall promptly consult with the United Nations to enable the United Nations to take appropriate measures to resolve the matter.

6. INDEMNIFICATION:

6.1 The Contractor shall indemnify, defend, and hold and save harmless, the United Nations, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the United Nations, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to:

6.1.1 allegations or claims that the possession of or use by the United Nations of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the United Nations under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; *or*,

6.1.2 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.

6.2 The indemnity set forth in Article 6.1.1, above, shall not apply to:

6.2.1 A claim of infringement resulting from the Contractor's compliance with specific written instructions by the United Nations directing a change in the specifications for the goods, property, materials, equipment or supplies to be or used, or directing a manner of performance of the Contract or requiring the use of specifications not normally used by the Contractor; *or*

6.2.2 A claim of infringement resulting from additions to or changes in any goods, property, materials equipment, supplies or any components thereof furnished under the Contract if the United Nations or another party acting under the direction of the United Nations made such changes.

6.3 In addition to the indemnity obligations set forth in this Article 6, the Contractor shall be obligated, at its sole expense, to defend the United Nations and its officials, agents and employees, pursuant to this Article 6, regardless of whether the suits, proceedings, claims and demands in question actually give rise to or otherwise result in any loss or liability.

6.4 The United Nations shall advise the Contractor about any such suits, proceedings, claims, demands, losses or liability within a reasonable period of time after having received actual notice thereof. The Contractor shall have sole control of the defense of any such suit, proceeding, claim or demand and of all negotiations in connection with the settlement or compromise thereof, except with respect to the assertion or defense of the privileges and immunities of the United Nations or any matter relating thereto, for which only the United Nations itself is authorized to assert and maintain. The United Nations shall have the right, at its own expense, to be represented in any such suit, proceeding, claim or demand by independent counsel of its own choosing.

6.5 In the event the use by the United Nations of any goods, property or services provided or licensed to the United Nations by the Contractor, in whole or in part, in any suit or proceeding, is for any reason enjoined, temporarily or permanently, or is found to infringe any patent, copyright, trademark or other intellectual property right, or in the event of a settlement, is enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, shall, promptly, either:

6.5.1 procure for the United Nations the unrestricted right to continue using such goods or services provided to the United Nations;

6.5.2 replace or modify the goods or services provided to the United Nations, or part thereof, with the equivalent or better goods or services, or part thereof, that is non-infringing; *or*,

6.5.3 refund to the United Nations the full price paid by the United Nations for the right to have or use such goods, property or services, or part thereof.

7. INSURANCE AND LIABILITY:

7.1 The Contractor shall pay the United Nations promptly for all loss, destruction, or damage to the property of the United Nations caused by the Contractor's personnel or by any of its subcontractors or anyone else directly or indirectly employed by the Contractor or any of its subcontractors in the performance of the Contract.

7.2 Unless otherwise provided in the Contract, prior to commencement of performance of any other obligations under the Contract, and subject to any limits set forth in the Contract, the Contractor shall take out and shall maintain for the entire term of the Contract, for any extension thereof, and for a period following any termination of the Contract reasonably adequate to deal with losses:

7.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;

7.2.2 workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;

7.2.3 liability insurance in an adequate amount to cover all claims, including, but not limited to, claims for death and bodily injury, products and completed operations liability, loss of or damage to property, and personal and advertising injury, arising from or in connection with the Contractor's performance under the Contract, including, but not limited to, liability arising out of or in connection with the acts or omissions of the Contractor, its personnel, agents, or invitees, or the use, during the performance

of the Contract, of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor; *and*,

7.2.4 such other insurance as may be agreed upon in writing between the United Nations and the Contractor.

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

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

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

7.5.1 name the United Nations as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;

7.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against the United Nations;

7.5.3 provide that the United Nations shall receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage; *and*,

7.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to the United Nations.

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

7.7 Except for any self-insurance program maintained by the Contractor and approved by the United Nations for purposes of fulfilling the Contractor's requirements for maintaining insurance under the Contract, the Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to the United Nations. Prior to the commencement of any obligations under the Contract, the Contractor shall provide the United Nations with evidence, in the form of certificate of insurance or such other form as the United Nations may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. The United Nations reserves the right, upon written notice to the Contractor, to obtain copies of any insurance policies or insurance program descriptions required to be maintained by the Contractor under the Contract. Notwithstanding the provisions of Article 7.5.3, above, the Contractor shall promptly notify the United Nations concerning any cancellation or material change of insurance coverage required under the Contract.

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

9. **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 the United Nations against any monies due to the Contractor or that may 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 or the United Nations.

9. **EQUIPMENT FURNISHED BY THE UNITED NATIONS TO THE CONTRACTOR:** Title to any equipment and supplies that may be furnished by the United Nations to the Contractor for the performance of any obligations under the Contract shall rest with the United Nations, and any such equipment shall be returned to the United Nations at the conclusion of the Contract or when no longer needed by the Contractor. Such equipment, when returned to the United Nations, 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 the United

Nations for the actual costs of any loss of, damage to, or degradation of the equipment that is beyond normal wear and tear.

10. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS:

10.1 Except as is otherwise expressly provided in writing in the Contract, the United Nations 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 the United Nations 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. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the United Nations.

10.2 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the United Nations does not and shall not claim any ownership interest thereto, and the Contractor grants to the United Nations 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.

10.3 At the request of the United Nations, 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 the United Nations in compliance with the requirements of the applicable law and of the Contract.

10.4 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 the United Nations, shall be made available for use or inspection by the United Nations at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to United Nations authorized officials on completion of work under the Contract.

11. PUBLICITY, AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE UNITED NATIONS: The

Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the United Nations, 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 in connection with its business or otherwise without the written permission the United Nations.

12. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION: Information and data that is considered proprietary by either Party or that is delivered or disclosed by one Party (“Discloser”) to the other Party (“Recipient”) during the course of performance of the Contract, and that is designated as confidential (“Information”), shall be held in confidence by that Party and shall be handled as follows:

12.1 The Recipient shall:

12.1.1 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*,

12.1.2 use the Discloser’s Information solely for the purpose for which it was disclosed.

12.2 Provided that the Recipient has a written agreement with the following persons or entities requiring them to treat the Information confidential in accordance with the Contract and this Article 12, the Recipient may disclose Information to:

12.2.1 any other party with the Discloser’s prior written consent; *and*,

12.2.2 the Recipient’s employees, officials, representatives and agents who have a need to know such Information for purposes of performing obligations under the Contract, and employees officials, representatives and agents of any legal entity that it controls, controls it, or with which it is under

common control, who have a need to know such Information for purposes of performing obligations under the Contract, *provided that*, for these purposes a controlled legal entity means:

12.2.2.1 a corporate entity in which the Party owns or otherwise controls, whether directly or indirectly, over fifty percent (50%) of voting shares thereof; *or*,

12.2.2.2 any entity over which the Party exercises effective managerial control; *or*,

12.2.2.3 for the United Nations, a principal or subsidiary organ of the United Nations established in accordance with the Charter of the United Nations.

12.3 The Contractor may disclose Information to the extent required by law, *provided that*, subject to and without any waiver of the privileges and immunities of the United Nations, the Contractor will give the United Nations sufficient prior notice of a request for the disclosure of Information in order to allow the United Nations to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.

12.4 The United Nations may disclose Information to the extent as required pursuant to the Charter of the United Nations, or pursuant to resolutions or regulations of the General Assembly or rules promulgated thereunder.

12.5 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.

12.6 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.

13. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS:

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

13.2 If the Contractor is rendered unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under the Contract, the United Nations shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for in Article 14, "Termination," except that the period of notice shall be seven (7) days instead of thirty (30) days. In any case, the United Nations shall be entitled to consider the Contractor permanently unable to perform its obligations under the Contract in case the Contractor is unable to perform its obligations, wholly or in part, by reason of *force majeure* for any period in excess of ninety (90) days.

13.3 *Force majeure* as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, *provided that* such acts arise from causes beyond the control and without the fault or negligence of the Contractor. The Contractor acknowledges and agrees that, with respect to any obligations under the Contract that the Contractor must perform in areas in which the United Nations is engaged in, preparing to engage in, or disengaging from any peacekeeping, humanitarian or similar operations, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest

occurring in such areas, shall not, in and of itself, constitute *force majeure* under the Contract.

14. TERMINATION:

14.1 Either Party may terminate the Contract for cause, in whole or in part, upon thirty (30) days' notice, in writing, to the other Party. The initiation of conciliation or arbitral proceedings in accordance with Article 17 "Settlement of Disputes," below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract.

14.2 The United Nations may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of the United Nations applicable to the performance of the Contract or the funding of the United Nations applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided by the Contract, upon sixty (60) day's advance written notice to the Contractor, the United Nations may terminate the Contract without having to provide any justification therefor.

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

14.3.1 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;

14.3.2 refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice;

14.3.3 place no further subcontracts or orders for materials, services, or facilities, except as the United Nations and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated;

14.3.4 terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated;

14.3.5 transfer title and deliver to the United Nations the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated;

14.3.6 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 the United Nations thereunder;

14.3.7 complete performance of the work not terminated; *and*,

14.3.8 take any other action that may be necessary, or that the United Nations may direct in writing, for the minimization of losses and for the protection and preservation of any property, whether tangible or intangible, related to the Contract that is in the possession of the Contractor and in which the United Nations has or may be reasonably expected to acquire an interest.

14.4 In the event of any termination of the Contract, the United Nations shall be entitled to obtain reasonable written accountings from the Contractor concerning all obligations performed or pending in accordance with the Contract. In addition, the United Nations shall not be liable to pay the Contractor except for those goods delivered and services provided to the United Nations in accordance with the requirements of the Contract, but only if such goods or services were ordered, requested or otherwise provided prior to the Contractor's receipt of notice of termination from the United Nations or prior to the Contractor's tendering of notice of termination to the United Nations.

14.5 The United Nations may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that:

14.5.1 the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, or applies for a moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent;

14.5.2 the Contractor is granted a moratorium or a stay, or is declared insolvent;

14.5.3 the Contractor makes an assignment for the benefit of one or more of its creditors;

14.5.4 a Receiver is appointed on account of the insolvency of the Contractor;

14.5.5 the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*,

14.5.6 the United Nations reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations under the Contract.

14.6 Except as prohibited by law, the Contractor shall be bound to compensate the United Nations for all damages and costs, including, but not limited to, all costs incurred by the United Nations in any legal or non-legal proceedings, as a result of any of the events specified in Article 14.5, above, and resulting from or relating to a termination of the Contract, even if the Contractor is adjudged bankrupt, or is granted a moratorium or stay or is declared insolvent. The Contractor shall immediately inform the United Nations of the occurrence of any of the events specified in Article 14.5, above, and shall provide the United Nations with any information pertinent thereto.

14.7 The provisions of this Article 14 are without prejudice to any other rights or remedies of the United Nations under the Contract or otherwise.

15. NON-WAIVER OF RIGHTS: The failure by either Party to exercise any rights available to it, whether under the Contract or otherwise, shall not be deemed for any purposes to constitute a waiver by the other Party of any such right or any remedy associated therewith, and shall not relieve the Parties of any of their obligations under the Contract.

16. NON-EXCLUSIVITY: Unless otherwise specified in the Contract, the United Nations shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the United Nations shall have no limitation on its right to obtain goods or services of the same kind, quality and quantity described in the Contract, from any other source at any time.

17. SETTLEMENT OF DISPUTES:

17.1 AMICABLE SETTLEMENT: The Parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the Conciliation Rules then obtaining of the United Nations Commission on International Trade Law ("UNCITRAL"), or according to such other procedure as may be agreed between the Parties in writing.

17.2 ARBITRATION: Any dispute, controversy, or claim between the Parties arising out of the Contract or the breach, termination, or invalidity thereof, unless settled amicably under Article 17.1, above, within sixty (60) days after receipt by one Party of the other Party's written request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall be empowered to order the return or destruction of goods or any property, whether tangible or intangible, or of any confidential information provided under the Contract, order the termination of the Contract, or order that any other protective measures be taken with respect to the goods, services or any other property, whether tangible or intangible, or of any confidential information provided under the Contract, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim measures") and Article 34 ("Form and effect of the award") of the UNCITRAL Arbitration Rules. The arbitral tribunal shall have no authority to award punitive damages. In addition, unless otherwise expressly provided in the Contract, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR") then prevailing, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim.

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 its subsidiary organs.

19. TAX EXEMPTION:

19.1 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 from such taxes, restrictions, duties, or charges, the Contractor shall immediately consult with the United Nations to determine a mutually acceptable procedure.

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

20. MODIFICATIONS:

20.1 Pursuant to the Financial Regulations and Rules of the United Nations, only the Chief of the United Nations Procurement Division, or such other Contracting authority as the United Nations has made known to the Contractor in writing, possesses the authority to agree on behalf of the United Nations to any modification of or change in the Contract, to a waiver of any of its provisions or to any additional contractual relationship of any kind with the Contractor. Accordingly, no modification or change in the Contract shall be valid and enforceable against the United Nations unless provided by a valid written amendment to the Contract signed by the Contractor and the Chief of the United Nations Procurement Division or such other contracting authority.

20.2 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to a valid amendment concluded in accordance with Article 20.1, above.

20.3 The terms or conditions of any supplemental undertakings, licenses, or other forms of agreement concerning any goods or services provided under the Contract shall not be valid and enforceable against the United Nations nor in any way shall constitute an agreement by the United Nations thereto unless any such undertakings, licenses or other forms are the subject of a valid amendment concluded in accordance with Article 20.1, above.

21. AUDITS AND INVESTIGATIONS:

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

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

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

22. LIMITATION ON ACTIONS:

22.1 Except with respect to any indemnification obligations in Article 6, above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 17.2, above, arising out of the Contract must be commenced within three years after the cause of action has accrued.

22.2 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.

23. ESSENTIAL TERMS: The Contractor acknowledges and agrees that each of the provisions in Articles 24 to 29 hereof constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the United Nations to terminate the Contract or any other contract with the United Nations immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind.

24. SOURCE OF INSTRUCTIONS: The Contractor shall neither seek nor accept instructions from any authority external to the United Nations in connection with the performance of its obligations under the Contract. Should any authority external to the United Nations seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the United Nations and provide all reasonable assistance required by the United Nations. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of the United Nations, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the United Nations.

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