

ANNEX B

CONDITIONS OF CONTRACT

**FOR THE PROVISION OF TRANSPORT, TREATMENT AND DISPOSAL OF HAZARDOUS
AND NON-HAZARDOUS ORGANIC AND INORGANIC CHEMICALS, EFFLUENTS AND
RELATED MATERIAL**

Contents

Clause

1.	Definitions and Interpretation.....	1
2.	OPCW's General Obligations	3
3.	OPCW's Administration	3
4.	Contractor's Performance of the Services	5
5.	Verification.....	9
6.	Warranties	10
7.	Contractor's Personnel	11
8.	Commencement, Delays and Suspension.....	13
9.	Completion of the Services	15
10.	Variations	15
11.	Contract Price and Payment	16
12.	Termination	18
13.	Indemnities and Limitation of Liability.....	20
14.	Insurance	21
15.	Force Majeure	22
16.	Governing Law and Arbitration	23
17.	General Provisions	23

CONDITIONS OF CONTRACT

1. Definitions and Interpretation

1.1 Definitions

In these Conditions of Contract (*Conditions*), the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

"**Commencement Date**" means the date notified under Sub-Clause 8.1 [Commencement of the Services], unless otherwise defined in the Contract Agreement.

"**Completion Certificate**" means a certificate issued under Clause 9 [Completion of the Services].

"**Contract**" means the Contract Agreement, these Conditions, the Scope of Requirements, and the further documents (if any) listed in the Contract Agreement.

"**Contractor**" means the person(s) named as the contractor in the Contract Agreement and the legal successors in title to this person(s).

"**Contractor's Personnel**" means the Contractor's Representative and all personnel whom the Contractor utilises for the Services including those Services on or in the Facility, who may include the staff, labour and other employees of the Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Services.

"**Contractor's Representative**" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Sub-Clause 4.4 [Contractor's Representative], who acts on behalf of the Contractor.

"**Contract Price**" means the agreed amount stated in the Contract Agreement for the execution and completion of the Services in accordance with the Contract.

"**Cost**" means all expenditure reasonably incurred (or to be incurred) by the Contractor, whether on or off the Facility, including overhead and similar charges, but does not include profit.

"**Country**" means the State Party to the CWC on whose territory the Facility is located.

"**CWC**" means the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction opened for signature on 13 January 1993 and entered into force on 29 April 1997.

"**Day**" means a calendar day and "**year**" means 365 days.

"**Facility**" means the industrial site, including any area, infrastructure and equipment needed at that site to perform the Services, which is subject to the control of the Contractor, where the Services will be performed and which is subject to verification by the OPCW as specified in Clause 5.

"**Final Statement**" means the statement defined in Sub-Clause 11.5 [Application for Final Payment].

"**Force Majeure**" is defined in Clause 15 [Force Majeure].

"**In-Country Escort**" means individuals specified by the Country, if they so wish, to accompany and assist the OPCW inspectors during the period from the arrival of the inspectors at the location designated by the Country for the in-country arrival of the inspectors until their departure from the Country.

"**Inspection Assistants**" means individuals designated by the Technical Secretariat as set forth in Section A of Part II of the Verification Annex to the CWC to assist inspectors in an

inspection or visit at the Facility, such as medical, security and administrative personnel and interpreters.

“Inspection Team” means the group of inspectors and inspection assistants assigned by the Director-General of the OPCW to conduct a particular inspection or visit at the Facility in accordance with the CWC.

“Inspectors” means individuals designated by the Technical Secretariat according to the procedure set forth in Section A of Part II of the Verification Annex to the CWC to carry out an inspection or a visit at the Facility in accordance with the CWC.

"Laws" means all national (or state) legislation, statutes, ordinances and other laws, and regulations and by-laws of any legally constituted public authority.

"Materials" means the hazardous and non-hazardous organic and inorganic chemicals, effluents, and related packaging materials and containers/drums, as described in this Contract and to be provided to the Contractor pursuant to the provisions of Sub-Clause 2.1 of these Conditions and subject of the Services and further described in the Scope of Requirements.

"OPCW" means the Organisation for the Prohibition of Chemical Weapons established by Article VIII of the CWC to achieve the object and purpose of the CWC, to ensure the implementation of its provisions, including those for international verification of compliance with it, and to provide a forum for consultation and cooperation among State Parties to the CWC, and the legal successors in title to it.

"OPCW's Personnel" means the OPCW's staff members and any other individual engaged by the OPCW in any form of special services agreement to assist the Technical Secretariat of the OPCW in the discharge of its functions and mandate, including the OPCW's Representative, the assistants referred to in Sub-Clause 3.2 [Other OPCW Personnel], and any other personnel notified to the Contractor, by the OPCW or the OPCW's Representative, as OPCW's Personnel.

"OPCW's Representative" means the person named by the OPCW in the Contract or appointed from time to time by the OPCW under Sub-Clause 3.1 [OPCW's Representative], who acts on behalf of the OPCW.

"Party" means the OPCW or the Contractor, as the context requires.

"Performance Security" means the financial guarantee delivered by the Contractor to the OPCW as provided under Sub-Clause 4.3 [Performance Security].

"Port" means the international port of debarkation of the Materials.

"Proposal" means the Contractor's signed offer for the Services and all other documents that the Contractor submitted therewith (other than these Conditions and the Scope of Requirements, if so submitted), as included in the Contract.

"Schedule of Payments" means the documents so named, as included in the Contract.

"Scope of Requirements" means the document entitled Scope of Requirements, as included in the Contract, and any additions and modifications to such document in accordance with the Contract. Such document specifies the purpose, scope and technical criteria, for the Services.

“Ship” means the ship destined to arrive in the Port and transporting the Materials.

"Statement" means a statement submitted by the Contractor as part of an application for payment under Clause 11 [Contract Price and Payment].

"Subcontractor" means any person named in the Contract as a subcontractor, or any person appointed as a subcontractor, for a part of the Services; and the legal successors in title to each of these persons.

"Time for Completion" means the time for completing the Services under Sub-Clause 8.2 [Time for Completion], as stated in the Scope of Requirements, with any extension under

Sub-Clause 8.4 [Extension of Time for Completion]), calculated from the Commencement Date.

"**Variation**" means any change to the Scope of Requirements or the Services, which is instructed or approved as a variation under Clause 10 [Variations].

"**Verification Activities**" means the activities specified under Clause 5 [Verification] and in the Scope of Requirements, that are conducted by the OPCW inspection teams at the Facility for the purpose of confirming the identity and quantity of the Materials to be treated and disposed of, to confirm that these Materials have been treated and disposed of, and to provide assurance that no Material is diverted.

"**Verification Annex**" means the Annex on Implementation and Verification to the CWC;

"**Services**" means the activities contemplated by the Contract and further described in the Scope of Requirements.

1.2 Interpretation

In the Contract, except where the context requires otherwise:

- a) words indicating one gender include all genders;
- b) words indicating the singular also include the plural and words indicating the plural also include the singular;
- c) provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing; and
- d) "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

2. OPCW's General Obligations

2.1 Provision of Possession of the Materials to the Contractor

On the Commencement Date, the Contractor shall be provided with possession of the Materials in the manner set forth in the Scope of Requirements. Upon delivery, the Contractor shall have the full and complete responsibility, care, custody and control of the Materials.

2.2 OPCW's Reasonable Assistance

The OPCW shall (where it is in a position to do so) provide reasonable assistance to the Contractor at the request of the Contractor with a view to facilitating the Contractor's Services under this Contract including by providing information and data which is reasonably required by the Contractor or by supporting the Contractor's applications for any permits, licences or approvals required by the Laws of the Country.

3. OPCW's Administration

3.1 OPCW's Representative

The OPCW's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him by the OPCW. Unless and until the OPCW notifies the Contractor otherwise, the OPCW's Representative shall be deemed to have the full authority of the OPCW under the Contract, except in respect of Clause 12.2 [Termination by the OPCW].

If the OPCW wishes to replace any person appointed as the OPCW's Representative, the OPCW shall give the Contractor not less than 14 days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

3.2 Other OPCW Personnel

The OPCW or OPCW's Representative may from time to time assign duties and delegate authority to its Personnel, and may also revoke such assignment or delegation. These may include inspectors engaged to carry out verification activities as specified in Clause 5. The assignment, delegation or revocation shall not take effect until the Contractor has received a copy of the same.

OPCW Personnel assigned or delegated by the OPCW in accordance with this Sub-Clause shall be suitably qualified persons, who are competent to carry out these duties and exercise this authority, and who are fluent in the language for communications defined in Sub-Clause 17.2 [Language].

3.3 Delegated Persons

All these persons, including the OPCW's Representative and Other OPCW Personnel, to whom duties have been assigned or authority has been delegated, shall only be authorised to issue instructions to the Contractor to the extent defined by the delegation. Any approval, check, certificate, consent, examination, inspection, instruction, notice, proposal, request, test, or similar act by a delegated person, in accordance with the delegation, shall have the same effect as though the act had been an act of the OPCW. However:

- a) unless otherwise stated in the delegated person's communication relating to such act, it shall not relieve the Contractor from any responsibility he has under the Contract, including responsibility for errors, omissions, discrepancies and non-compliances;
- b) any failure to disapprove any Service, shall not constitute approval, and shall therefore not prejudice the right of the OPCW subsequently to reject any of the Services; and
- c) if the Contractor questions any determination or instruction of a delegated person, the Contractor may refer the matter to the OPCW, who shall promptly confirm, reverse or vary the determination or instruction.

3.4 Instructions

The OPCW may issue to the Contractor instructions that may be necessary for the Contractor to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Sub-Clause (or other term of the Contract) in which the obligations are specified. The Contractor shall take instructions from the OPCW, or from the OPCW's Representative or an Assistant to whom the appropriate authority has been delegated under this Clause.

3.5 Determinations

Whenever these Conditions provide that the OPCW shall proceed in accordance with this Sub-Clause 3.5 to agree or determine any matter, the OPCW shall consult with the Contractor in an endeavour to reach agreement. If agreement is not achieved, the OPCW shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances. The OPCW shall give notice to the Contractor of each agreement or determination, with supporting particulars.

4. Contractor's Performance of the Services

4.1 Contractor's Legal Status and General Obligations

The Contractor shall be considered as possessing the legal status of an independent contractor with the OPCW and shall not be considered as acting as an agent of the OPCW. The Contractor's Personnel shall, under no circumstances, be considered as staff members of the OPCW, even when working on the premises of the OPCW or under direct instruction from the OPCW.

The Contractor shall carry out the Services in accordance with the applicable Law, consistent with prevailing international standards. It shall be the Contractor alone to have knowledge of applicable Laws and to undertake rigorous compliance therewith.

The Contractor shall execute and complete the Services in accordance with the Contract. When completed, the final disposal of the Materials shall have been in the manner as defined in the Contract and, in particular, in the Scope of Requirements.

The Contractor shall provide all material, equipment and services required in and for the orderly and timely execution and completion of the Services.

The Services shall include any service that is necessary to satisfy the Scope of Requirements, or is implied by the Contract, and all services that, while not specifically mentioned in the Contract, including the Scope of Requirements, are necessary for the proper execution of the Services or are implied by generally accepted professional standards.

The Contractor shall be responsible for all the activities related to the importation, transportation from the Port to the Facility, disposal and treatment of the Materials as specified in the Scope of Requirements, and for ensuring the safety and security of such transportation and Facility operations in respect of the Services and the protection of the environment in the performance of the Services.

The Contractor shall perform the Services under the Contract:

- a) competently, efficiently and professionally, with the skill, care and diligence to a standard expected of an internationally experienced contractor experienced in performing services equivalent in scope and complexity to the Services;
- b) in accordance with recognized international quality standards and practices (for services equivalent in scope and complexity to the Services) and in accordance with the terms of the Contract, including the Scope of Requirements;
- c) in compliance with any applicable Laws, consistent with the prevailing international standards;
- d) in conformity with a high standard of moral and ethical conduct;
- e) without seeking or accepting instructions from any authority external to the OPCW in connection with the execution of the Services under this Contract; and
- f) carrying out all further functions and providing all further materials which:
 - i. by implication are necessary for the proper carrying out of the Services; and
 - ii. which a contractor performing to the standard required by the Contract would reasonably be expected to carry out;
- g) to the reasonable satisfaction of OPCW.

4.2 Technical Standards and Regulations

The importation, transportation, execution and completion of the Services by the Contractor shall comply with the technical standards and environmental, health and safety Laws, and any other standards, or Laws applicable to the Services, consistent with the prevailing international standards.

4.3 Performance Security

The Contractor shall deliver the Performance Security to the OPCW not later than the date by which both Parties will have signed this Contract. The Performance Security shall be issued by an entity and from within a country approved by the OPCW, and shall be in the form approved by OPCW in an amount equal to the total contract price.

The Contractor shall ensure that the Performance Security is valid and enforceable until the Contractor has executed and completed the Services and the OPCW has issued the Completion Certificate. If the terms of the Performance Security specify its expiry date, and the Contractor has not become entitled to receive the Completion Certificate by the date 28 days prior to the expiry date, the Contractor shall extend the validity of the Performance Security until the issue of the Completion Certificate.

The OPCW shall return the Performance Security to the Contractor within 21 days after the Contractor has become entitled to receive the Completion Certificate.

4.4 Contractor's Representative

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. The Contractor shall be responsible for the professional and technical competence of the Contractor's Representative who must be able to effectively work in cooperation with the OPCW Personnel.

Unless the Contractor's Representative is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the OPCW for consent the name and particulars of the person the Contractor proposes to appoint as Contractor's Representative. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Representative, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment.

The Contractor shall not, without the prior consent of OPCW, revoke the appointment of the Contractor's Representative or appoint a replacement.

The Contractor's Representative shall, on behalf of the Contractor, receive instructions under Sub-Clause 3.4 [Instructions] and shall act as the primary point of contact for the implementation of the Services under this Contract.

The Contractor's Representative may delegate any powers, functions and authority to any competent person, and may at any time revoke the delegation. Any delegation or revocation shall not take effect until the OPCW has received prior notice signed by the Contractor's Representative, naming the person and specifying the powers, functions and authority being delegated or revoked.

The Contractor's Representative and all these persons shall be fluent in the language for communications defined in Sub-Clause 17.2 [Language].

4.5 Subcontractors

The Contractor shall not subcontract the whole of the Services but may subcontract only part of the Services with the prior written consent of the OPCW.

The Contractor shall be responsible for the acts or defaults of any Subcontractor, his staff, labour and other employees, and any other personnel assisting the Subcontractor in the execution of the Services, as if they were the acts or defaults of the Contractor. The Contractor shall give the OPCW not less than 10 days' notice of:

- a) the intended appointment of the Subcontractor, with detailed particulars which shall include his relevant experience;
- b) the intended commencement of the Subcontractor's services;
- c) the intended commencement of the Subcontractor's services on the Facility; and
- d) the intended scope of services to be assigned to the Subcontractor.

The Contractor shall ensure that the terms of any Subcontract entered into by the Contractor for the performance of part of the Services shall fully conform to the terms of this Contract.

4.6 Co-operation in Facilitating Access to the Facility

In addition to its obligations pursuant to Clause 5 [Verification], the Contractor shall, as specified in the Contract and in the Scope of Requirements or as instructed by the OPCW, allow appropriate opportunities for access to the Facility to:

- a) OPCW's Personnel; and
- b) any other persons authorised by OPCW.

Any such instruction shall not constitute a Variation.

4.7 Safety Procedures

The Contractor shall:

- a) comply with all applicable safety Laws; and
- b) adopt necessary safety measures at all times to ensure the safety of all persons entitled to be on the Facility including but not limited to providing appropriate safety trainings and relevant information on safety plans, manuals and procedures applicable on the Facility to such persons, as necessary;
- c) take any necessary measures to ensure the safety of the public when executing the Services.

4.8 Quality Assurance

The Contractor shall institute a quality assurance system specific to the transportation, treatment and disposal of the Materials to demonstrate compliance with the requirements of the Contract and any applicable Laws. The system shall be in accordance with good international practice and in accordance with any details stated in the Scope of Requirements. The OPCW shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the OPCW for information before each execution stage is commenced. When any document of a technical nature is issued to the OPCW, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

4.9 Materials Data

The OPCW shall make available to the Contractor for his information, prior to the Commencement Date, all relevant data in the OPCW's possession with respect to the Materials, their quantities, packaging, labelling and importation arrangements.

The Contractor shall be responsible for verifying and interpreting all such data. The OPCW shall have no responsibility for the accuracy, sufficiency or completeness of such data.

4.10 Unforeseeable Difficulties

Except as otherwise stated in the Contract:

- a) the Contractor shall be deemed to have obtained all necessary information as to risks, contingencies and other circumstances which may influence or affect the Services;
- b) by signing the Contract, the Contractor accepts total responsibility for having foreseen all difficulties and Costs of successfully completing the Services; and
- c) neither the Contract Price nor the Time for Completion shall be adjusted to take account of any unforeseen difficulties or costs.

4.11 Access Route

The OPCW provides no guarantee and assumes no responsibility for the suitability or availability of particular access routes (including those from the Port to the Facility), and any Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

The Contractor shall comply, at its Cost, with any of the transportation and related requirements of the national authorities in the Country and in any other country traversed.

4.12 Transportation of Materials from the Port to the Facility and other Services incidental to the Treatment and Disposal of the Materials

Unless otherwise stated in the Scope of Requirements:

- a) the Contractor shall be responsible for loading, transporting (from the Port to the Facility), receiving, unloading, storing and protecting the Materials to be disposed of and other equipment required for the Services;
- b) the Contractor shall be responsible for obtaining all necessary permits and make proper notifications to allow loading, transporting (from the Port to the Facility), receiving, unloading, storing and protecting the Materials to be disposed of and other equipment required for the Services; and
- c) the Contractor shall indemnify and hold the OPCW harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from or during the loading, transporting (from the Port to the Facility), receiving, unloading, storing and protecting of Materials and other equipment required for the Services, and shall negotiate and pay all claims arising from their transport, receiving, unloading, storing and protecting.

4.13 Protection of the Environment

The Contractor shall take all necessary steps and measures to protect the environment in its dealing with the Materials and in its progress of the Services (during transportation and both on and off the Facility).

The Contractor shall ensure that no emissions, surface discharges and/or effluents from the Contractor's activities in respect of the Materials shall occur, and shall in no event exceed the values and/or levels prescribed by applicable Laws.

The Contractor shall obtain, as required, and pay for, all operational and environmental permits required for the conduct of the Services contemplated in this Contract and in the Scope of Requirements.

4.14 Progress Reports

Progress reports shall be prepared by the Contractor and submitted to the OPWC. Reports shall be submitted weekly (and signed by the Contractor's Representative), each within 2 days after the last day of the period to which each report relates.

Reporting shall continue until the Contractor has completed all services under the Contract and the OPCW has issued the Completion Certificate for the Services.

Each report shall include:

- a) charts and detailed descriptions of progress;
- b) photographs showing the status of transportation and subsequently the disposal and treatment of Materials in the Facility;
- c) the details described in Sub-Clause 7.4 [Records of Contractor's Personnel];
- d) copies of quality assurance documents, test results and certificates of Materials;
- e) safety statistics, including details of any incidents and activities relating to environmental aspects, health and safety of personnel, security of the Material and the related equipment; and
- f) comparisons of actual and planned progress, with details of any events or circumstances which may jeopardize the completion in accordance with the Contract and the Time for Completion, and the measures being (or to be) adopted to overcome delays or other difficulties.
- g) information regarding the Contractor's actions in facilitating the implementation of verification measures by the OPCW in accordance with Sub-Clause 4.6 [Cooperation in Facilitating Access to the Facility] and Clause 5 [Verification].

4.15 Security of the Facility and the Materials

The Contractor shall be responsible for keeping unauthorised persons off the Facility, and authorised persons shall be limited to the Contractor's Personnel and the OPCW's Representative and OPCW's Personnel; and to any other personnel notified to the Contractor, by (or on behalf of) the OPCW, as authorised personnel of the OPCW on the Facility.

The Contractor shall take all reasonable steps to protect the security of the Facility and the Materials in its progress of the Services (during transportation and both on and off the Facility).

The Contractor shall comply with any instructions from the OPCW aimed at ensuring the security of the Materials. Any questions related to any issues on security shall be sent to the OPCW Representative immediately.

Access to the Materials shall be controlled and monitored by the Contractor's Personnel and be granted only to that personnel that have been specifically and properly authorized for such purpose by the Contractor.

All operations of the Contractor, including without limitation, storage, disposal and treatment of the Materials, shall be confined to areas which must be pre-approved by the OPCW.

5. Verification

The Parties refer to the CWC, including its Verification Annex. The Parties also refer to decision EC-M-34/DEC.1, dated 15 November 2013, of the Executive Council of the OPCW setting forth the detailed requirements for the destruction of the Syrian chemical weapons and Syrian chemical weapons production facilities.

The Contractor agrees to allow and facilitate the conduct by OPCW inspection teams of their verification activities in respect of the Materials and the Facility, in accordance with the CWC, including its Verification Annex, any relevant decisions by the policy-making organs of the OPCW, including decision EC-M-34/DEC.1, this Contract, including the Scope of Requirements, and any agreement that may be concluded between the OPCW and the Country specifying the arrangements that shall govern inspections and visits at the Facility.

In particular, the Contractor shall:

- allow the OPCW inspectors to conduct the verification activities as specified in the Scope of Requirements, including by allowing the physical presence of inspectors at the Facility and the installation of monitoring and recording instruments and the review of recordings made with such instruments;
- observe the rights of OPCW inspectors as set forth in Section E of Part II and, as applicable, paragraphs 62, and 65 to 70 of Part IV(A) of the Verification Annex, including but not limited to the right of unimpeded access to all parts of the Facility, including any temporary holding/storage area therein; the right to interview any Facility personnel; the right to inspect documentation and records; the right to have photographs taken; the right to apply seals on chemicals and related material to facilitate an accurate inventory thereof; the right to tag, for sampling, the chemicals and related material; and the right to have samples taken and to perform analysis of such samples as appropriate; and
- in addition to any other privileges and immunities that they may otherwise enjoy, observe the inviolability of the workspace occupied by the OPCW inspectors at the Facility, the papers and correspondence, including records, of the OPCW inspectors, and of the samples and equipment carried by them.

6. Warranties

6.1 Contractor Warranties

The Contractor hereby represents and warrants as follows:

- a) that it is a company duly incorporated, properly organised and validly existing under the Laws of the jurisdiction of its incorporation;
- b) that it has the corporate power, authority and capacity to enter into and perform its obligations under the Contract;
- c) that the Contract has been duly authorized, executed and delivered by it and is a valid and binding obligation of the Contractor enforceable in accordance with its terms;
- d) that it has been duly licensed and has obtained all authorisations and permits from the relevant national authorities in the Country to execute the Services;
- e) it has the knowledge, competence, experience, expertise, technology, quality assurance, environmental care and enhancement programs, safety and health plans, employee competency programs, work practices and human and financial resources required to properly execute the Services and ensure the due and proper performance of the Contract;
- f) its employees are competent, diligent, professional and efficient in their respective practice areas and will exercise all due skill and care, and are qualified and skilled properly to perform the Services;
- g) its Subcontractors have or will have the competence, experience, capacity, efficiency, expertise, technology, quality assurance, environmental care and enhancement programs, safety and health plans, employee competency programs, work practices and human and financial resources required for the performance of the relevant parts of the Services in accordance with the Contract;
- h) the Contractor's conduct of the Services will not infringe the Intellectual Property Rights of any third party;

- i) it will perform the Services in accordance with the standards set out in Sub-Clause 4.1 [Contractor's General Obligations] in order that the Services will comply with all requirements under the Contract;
- j) the Contractor and its personnel will not engage in any conduct that is inconsistent with a high standard of moral and ethical conduct; and
- k) it will perform the Contract in accordance with the terms and conditions stipulated therein.

6.2 OPCW's Reliance on and Repetition of Representations and Warranties

The Contractor acknowledges that the OPCW has entered into the Contract relying on the skill, care, expertise, experience and ability of the Contractor to carry out the Services, and the representations and warranties in the Contract.

Each representation and warranty under this Clause 6 is deemed repeated by the Contractor upon each submission to the OPCW of the progress reports contemplated by Sub-Clause 4.14 under the Contract and again upon the issuance of the Completion Certificate.

The Parties agree that each representation and warranty set out in this Clause 6 shall be construed independently and the meaning given to any one such representation and warranty shall not be restricted by reference to any other representation and warranty.

7. Contractor's Personnel

7.1 Labour Laws

The Contractor shall comply with all labour Laws and regulations applicable to the Contractor's Personnel in the Country, consistent with recognised international standards. The Contractor shall require his employees to obey all applicable Laws and regulations, including those concerning health and safety at work.

7.2 Health and Safety

Notwithstanding the terms set forth in Sub-clause 4.7 regarding Safety Procedures applying generally on the Facility, the Contractor shall at all times take all necessary precautions to maintain the health and safety of the Contractor's Personnel. In collaboration with the Country's health authorities, the Contractor shall ensure that medical staff, first aid facilities, hospital and ambulance service are available at all times.

The Contractor shall appoint an Accident Prevention Officer at the Facility, responsible for maintaining safety and protection against accidents. This person shall be qualified for this responsibility, and shall have the authority to issue instructions and take protective measures to prevent accidents. Throughout the execution of the Services, the Contractor shall provide whatever is required by this person to exercise this responsibility and authority. Unless this person is named in the Contract, the Contractor shall, prior to the Commencement Date, submit to the OPCW for consent the name and particulars of the person the Contractor proposes to appoint as Accident Prevention Officer. If consent is withheld or subsequently revoked, or if the appointed person fails to act as Contractor's Accident Prevention Officer, the Contractor shall similarly submit the name and particulars of another suitable person for such appointment. The Contractor shall not, without the prior consent of OPCW, revoke the appointment of the Contractor's Representative or appoint a replacement. Such consent will not be unreasonably withheld by the OPCW.

The Contractor shall send, to the OPCW, details of any accident as soon as practicable after its occurrence. The Contractor shall maintain records and make reports concerning health, safety and welfare of persons, as the OPCW may reasonably require.

7.3 Contractor's Personnel

The Contractor shall be exclusively responsible for the Personnel it assigns to perform the Services under the Contract. The Contractor's Personnel shall be reliable, appropriately qualified, skilled and experienced and generally able to effectively perform the obligations under the Contract.

The Contractor's Personnel shall be professionally qualified and, if required to work with officials or staff of the OPCW, shall be able to do so effectively.

The OPCW may, at any time, require the Contractor to remove (or cause to be removed) from the Services under this Contract any person employed in the Facility or engaged in the Services, including the Contractor's Representative, who:

- a) persists in any misconduct or lack of care;
- b) carries out duties incompetently or negligently or lacks the requisite level of experience;
- c) fails to conform with any provisions of the Contract, including engaging in active cooperation with OPCW's Personnel; or
- d) persists in any conduct which is prejudicial to safety, health, or the protection of the environment or in contracting with any applicable Laws and regulations.

The Contractor shall then appoint (or cause to be appointed) a suitable replacement person who shall have at a minimum the same qualifications of the person replaced by the Contractor.

The removal and/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 the Contractor's obligations under the Contract.

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

Any request by the OPCW for the removal or replacement of the Contractor's Personnel, including the Contractor's Representative, shall not be considered to be a termination, in whole or in part, of the Contract, and the OPCW shall not bear any liability in respect of such removed or replaced personnel.

Nothing in this Sub-Clause 7.3 shall be construed to create any obligations on the part of the OPCW with respect to the Contractor's Personnel assigned to perform the Services under the Contract, and such personnel shall remain the sole responsibility of the Contractor.

The Contractor shall be responsible for requiring that all Personnel assigned by it to perform the Services under the Contract and who may have access to the Materials or the property of the OPCW complies with all the relevant terms of this Contract and the Scope of Requirements.

The Contractor shall be responsible for requiring that all personnel assigned by it to perform the Services under the Contract and who may or may be in contact with the OPCW's Personnel, duly follow the OPCW's instructions and cooperate with the OPCW's Personnel in accordance with the terms of this Contract.

7.4 Records of Contractor's Personnel

The Contractor shall submit, to the OPCW, details in respect of each member of Contractor's Personnel and of each type of Contractor's equipment in the Facility which is assigned to the performance of the Services under this Contract. Details shall be submitted as part of the weekly Progress Report referred to in Sub-Clause 4.14, in a form approved by the OPCW, until the OPCW has issued the Completion Certificate for the Services.

8. Commencement, Delays and Suspension

8.1 Commencement of Services

The Commencement Date shall be any time on or after the date of entry into force of this Contract.

The OPCW shall give the Contractor not less than 7 days' notice of the Commencement Date.

On the Commencement Date, the Contractor shall immediately take possession of the Materials (offloading them Free on Board from the Ship berthed in the Port) and commence execution of the Services, and shall then proceed with the Services with due expedition and without delay until the issue of the Completion Certificate.

8.2 Time for Completion

The Contractor shall complete the whole of the Services within the milestone schedule provided by the OPCW, pursuant to the Scope of Requirements, including completing all work that is stated in the Contract as being required for the Services to be considered to be completed for the purposes of Sub-Clause 9.1 [Completion of the Services].

8.3 Programme

The Scope of Requirements contains a proposed sequence of work with key dates for the completion of the execution of the Services. The Proposal contains the Contractor's programme for the execution of the Services in accordance with the provisions of the Contract. The Contractor shall also submit a revised programme whenever the previous programme is inconsistent with actual progress or with the Contractor's obligations. Unless otherwise stated in the Contract, each programme shall include:

- a) the order in which the Contractor intends to carry out the Services, including the anticipated timing of each major stage of the Services;
- b) the sequence and timing of inspections and tests including those, if any, specified in the Contract; and
- c) a supporting report which includes:
 - i. a general description of the methods which the Contractor intends to adopt for the execution of the Services; and
 - ii. the approximate number and qualifications of Contractor's Personnel for each major stage.

Unless the OPCW, within 7 days after receiving a programme, gives notice to the Contractor stating the extent to which it does not comply with the Contract, the Contractor shall proceed in accordance with the programme, subject to his other obligations under the Contract. The OPCW's Personnel shall be entitled to rely upon the programme when planning their activities. Provided, however, that in no event shall the issue by the Contractor of a revised programme result in an extension of the Time for Completion.

The Contractor shall promptly give notice to the OPCW of specific probable future events or circumstances that may adversely affect or delay the execution of the Services. In this event, or if the OPCW gives notice to the Contractor that a programme fails (to the extent stated) to comply with the Contract or to be consistent with actual progress and the Contractor's stated intentions, the Contractor shall submit a revised programme to the OPCW in accordance with this Sub-Clause.

8.4 Extension of Time for Completion

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion for the purposes of Sub-Clause 9.1 [Completion of the Services] is or will be delayed by any of the following causes:

- (a) an approved Variation (unless an adjustment to the Time for Completion has been agreed under Sub-Clause 10.2 [Variation Procedure]); or
- (b) a cause of delay giving an express entitlement to extension of time under a Sub-Clause of these Conditions.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall immediately give notice of such understanding to the OPCW. In all cases not covered by paragraphs (a) and (b) of this Sub-Clause, the Contractor shall request an extension of the Time for Completion in writing to the OPCW.

8.5 Delays Caused by Authorities in the Country

Any delays caused by the public authorities in the Country shall not be considered as a cause of delay under sub-paragraph (b) of Sub-Clause 8.4 [Extension of Time for Completion] or as a cause of Force Majeure under Clause 15. The Contractor shall have assured itself of the full and active cooperation of all relevant public authorities in the Country prior to the date of the signature of the Contract.

8.6 Rate of Progress

If, at any time:

- (a) actual progress is too slow to complete within the Time for Completion; and/or
- (b) progress has fallen (or will fall) behind the current programme under Sub-Clause 8.3 [Programme];

other than as a result of a cause listed in Sub-Clause 8.4 [Extension of Time for Completion], then the OPCW may instruct the Contractor to submit, under Sub-Clause 8.3 [Programme], a revised programme and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

Unless the OPCW notifies otherwise, the Contractor shall adopt these revised methods, which may require increases in the working hours and/or in the numbers of Contractor's Personnel, at the risk and cost of the Contractor.

8.7 Delay Damages

If the Contractor fails to comply with Sub-Clause 8.2 Time for Completion, the Contractor shall pay delay damages to OPCW for this default. These delay damages shall be the weekly sum of 2% of the total contract price which shall be paid for every day that shall elapse between the relevant Time for Completion and the date stated in the Completion Certificate. However, the total amount due under this Sub-Clause shall not exceed the maximum amount of delay damages of 10% of the total contract price. The OPCW may set off any such delay damages against any amounts otherwise payable by the OPCW to the Contractor.

These delay damages shall be the only damages due from the Contractor for such default, other than in the event of termination under Sub-Clause 12.2 [Termination by OPCW] prior to completion of the Services. These damages shall not relieve the Contractor from his obligation to complete the Services, or from any other duties, obligations or responsibilities that he may have under the Contract.

8.8 Suspension of Services

The OPCW may at any time instruct the Contractor to suspend progress of part or all of the Services. During such suspension, the Contractor shall protect, store and secure the Materials in isolation and against any risk of deterioration, loss or damage.

The OPCW may also notify the cause for the suspension. If and to the extent that the cause is notified and is due to the responsibility of the Contractor, the following Sub-Clause 8.9 shall not apply.

8.9 Consequences of Suspension

If the Contractor suffers delay and/or incurs additional Cost from complying with the OPCW's instructions under Sub-Clause 8.8 [Suspension of Services] and/or from resuming the work, the Contractor shall give notice to the OPCW and shall be entitled to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]; and
- b) payment of any such Cost (to the extent properly documented to the satisfaction of the OPCW's Representative), which shall be added to the Contract Price.

After receiving this notice, OPCW shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

9. Completion of the Services

The Contractor may apply by notice to the OPCW for a Completion Certificate when the Services have been completed in accordance with the Contract.

OPCW shall, within 7 days after receiving the Contractor's application:

- a) issue the Completion Certificate to the Contractor, stating the date on which the Services were completed in accordance with the Contract; or
- b) reject the application, giving reasons and specifying the work required to be performed by the Contractor to enable the Completion Certificate to be issued. The Contractor shall then complete this work before issuing a further notice under this Sub-Clause.

10. Variations

10.1 Right to Vary

The OPCW may initiate a Variation at any time prior to issuing the Completion Certificate for the Services, either by an instruction or by a request for the Contractor to submit a proposal. The Contractor shall execute and be bound by each Variation.

10.2 Variation Procedure

If the OPCW requests a proposal, prior to instructing a Variation, the Contractor shall respond in writing as soon as practicable, by submitting:

- a) a description of the proposed work to be performed and a programme for its execution;
- b) the Contractor's proposal for any necessary modifications to the programme according to Sub-Clause 8.3 [Programme] and to the Time for Completion; and
- c) the Contractor's proposal for adjustment to the Contract Price (using, to the extent applicable, the rates and prices set forth in the Proposal submitted in response to the Call for Proposals).

The OPCW shall, as soon as practicable after receiving such proposal, respond with approval, disapproval or comments. The Contractor shall not delay any work whilst awaiting a response.

Each instruction to execute a Variation, with any requirements for the recording of Costs, shall be issued by the OPCW to the Contractor, who shall acknowledge receipt.

Upon instructing or approving a Variation, the OPCW shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine adjustments to the Contract Price and the Schedule of Payments.

One copy of the Contractor's proposal (signed by the Contractor's Representative) will, if correct, or when agreed, be signed by the OPCW and returned to the Contractor. The Contractor shall then submit priced statements of these resources to the OPCW, prior to their inclusion in the next Statement under Sub-Clause 11.2 [Application for Interim Payments].

10.3 No Adjustments for Changes in Legislation

The Contract Price shall not be adjusted to take account of any increase or decrease in Cost resulting from a change in the Laws of the Country (including the introduction of new Laws and the repeal or modification of existing Laws) or in the judicial or official governmental interpretation of such Laws, made after the Commencement Date, which affect the Contractor in the performance of obligations under the Contract.

11. Contract Price and Payment

11.1 The Contract Price

Payment for the Services shall be made on the basis of the lump sum Contract Price (as specified in the Contract Agreement), subject to adjustments in accordance with the Contract. The Contractor shall pay all taxes, duties and fees required under the Contract, and the Contract Price shall not be adjusted for any of these costs. The Contractor shall be deemed to have satisfied itself as to the correctness and sufficiency of the Contract Price. The Contract Price covers all of the Contractor's obligations under the Contract and all things necessary for the proper execution and completion of the Services.

11.2 Application for Interim Payments

The Contractor shall submit a Statement to OPCW after the end of the period of payment stated in the Contract (if not stated, after the end of each month), in a form approved by the OPCW, showing in detail the amounts to which the Contractor considers himself to be entitled, together with supporting documents which shall include the relevant report on progress in accordance with Sub-Clause 4.15 [Progress Reports].

The Statement shall include the following items, as applicable, in the sequence listed:

- a) the estimated contract value, if any, (based on the completion of the milestones (and the corresponding amount) quoted in the Schedule of Payments) of the Services executed up to the end of the month (including Variations);
- b) any other additions or deductions which may have become due under the Contract; and
- c) the deduction of amounts included in previous Statements.

11.3 Interim Payments

No amount will be paid until the OPCW has received and approved the Performance Security. Thereafter, the OPCW shall within 30 days after receiving a Statement and supporting documents, give to the Contractor notice of its approval of the Statement or of

any items in the Statement with which the OPCW disagrees, with supporting particulars. Payments due shall not be withheld, except that:

- a) if any work done by the Contractor is not in accordance with the Contract, the cost of rectification (which shall be for the account of the Contractor) may be withheld until rectification has been completed; and/or
- b) if the Contractor was or is failing to perform any work or obligation in accordance with the Contract, and had been so notified by OPCW, the value of this work or obligation may be withheld until the work or obligation has been performed.

The OPCW may, by any payment, make any correction or modification that should properly be made to any amount previously considered due. Payment shall not be deemed to indicate OPCW's acceptance, approval, consent or satisfaction.

11.4 Timing of Payments

OPCW shall pay to the Contractor:

- a) the amount which is due in respect of each Statement, other than the Final Statement, within 60 days after receiving the Statement and supporting documents; and
- b) the final amount due, within 60 days after receiving the Final Statement and written discharge in accordance with Sub-Clause 11.5 [Application for Final Payment] and Sub-Clause 11.6 [Discharge].

Payment of the amount due shall be made by the OPCW into the bank account nominated by the Contractor.

11.5 Application for Final Payment

Within 60 days after receiving the Completion Certificate, the Contractor shall submit, to the OPCW, a draft final statement with supporting documents showing in detail in a form approved by the OPCW:

- a) the value of all work done in accordance with the Contract; and
- b) any further sums which the Contractor considers to be due to him under the Contract or otherwise.

If the OPCW disagrees with or cannot verify any part of the draft final statement, the Contractor shall submit such further information as the OPCW may reasonably require and shall make such changes in the draft as may be agreed between them. The Contractor shall then prepare and submit to the OPCW the final statement as agreed. This agreed statement is referred to in these Conditions as the "Final Statement".

11.6 Discharge

When submitting the Final Statement, the Contractor shall submit a written discharge that confirms that the total of the Final Statement represents full and final settlement of all moneys due to the Contractor under or in connection with the Contract. This discharge may state that it becomes effective when the Contractor has received the Performance Security and the outstanding balance of this total, in which event the discharge shall be effective on such date.

11.7 Final Payment

In accordance with sub-paragraph (b) of Sub-Clause 11.4 [Timing of Payments], the OPCW shall pay to the Contractor the amount that is finally due, less all amounts previously paid by the OPCW.

12. Termination

12.1 Notice to Correct

If the Contractor fails to carry out any obligation under the Contract, the OPCW may by notice require the Contractor to make good the failure and to remedy it within a specified reasonable time.

12.2 Termination by the OPCW

The OPCW shall be entitled to terminate the Contract if the Contractor:

- a) fails to comply with Sub-Clause 4.3 [Performance Security] or with a notice under Sub-Clause 12.1 [Notice to Correct];
- b) abandons the Services or otherwise plainly demonstrates the intention not to continue performance of his obligations under the Contract;
- c) without reasonable excuse fails to proceed with the Services in accordance with Clause 8 [Commencement, Delays and Suspension];
- d) subcontracts the whole of the Services or assigns the Contract without the required agreement;
- e) applies for a moratorium or is granted a moratorium; becomes bankrupt or insolvent, goes into liquidation; offers a settlement in lieu of bankruptcy or if its property is attached; has a receiving or administration order made against him; compounds with his creditors; or carries on business under a receiver, trustee or manager for the benefit of his creditors; or if the Contractor loses power of disposal over its capital or part of it or loses its status as a legal person, is wound up or in actual fact is liquidated; or if any act is done or event occurs which under applicable Laws has a similar effect to any of these acts or events;
- f) fails to comply with any other condition of the Contract; or
- g) gives or offers to give directly or indirectly to any person any bribe, gift, gratuity, commission or other thing of value, as an inducement or reward:
 - i. for doing or forbearing to do any action in relation to the Contract; or
 - ii. for showing or forbearing to show favour or disfavour to any person in relation to the Contract;

or if any of the Contractor's Personnel, agents or Subcontractors gives or offers to give directly or indirectly to any person any such inducement or reward as is described in this sub-paragraph (f). However, lawful inducements and rewards to Contractor's Personnel shall not entitle termination.

In any of these events or circumstances, the Contractor shall be in breach of this Contract as a consequence and the OPCW may, upon giving 14 days' notice to the Contractor terminate the Contract. However, in the case of sub-paragraph (e) or (g), the OPCW may by notice terminate the Contract immediately.

The OPCW's election to terminate the Contract shall not prejudice any other rights of OPCW, under the Contract or otherwise, including but not limited to its right to impose liquidated damages, demand payment or compensation for damages or for cancellation of the Contract.

12.3 Consequences of Termination

After a notice of termination under Sub-Clause 12.2 [Termination by the OPCW] has taken effect, the OPCW may:

- a) require the Contractor to prepare the Materials for shipment, utilizing the original packing containers or their equivalent, and either hold the Materials for collection

by a designee of the OPCW or transport the Materials back to the Port and load the same on a ship designated by the OPCW, all at the risk and cost of the Contractor;

- b) require the Contractor to take any other immediate steps to bring the work or service to a close in a prompt and orderly manner;
- c) require the Contractor to reduce expenses to a minimum and not undertake any further commitments under the contract from the date of receipt of the notice of termination;
- d) determine the costs of completion of the Services, damages for delay in completion, and all other costs incurred or to be incurred by the OPCW; and/or
- e) recover from the Contractor any losses (including loss of interest) and damages incurred by the OPCW and any extra costs of completing the Services even in the event that a moratorium is granted or the Contractor is declared insolvent.

The damages under sub-paragraph (c) shall include in any case all amounts due until the original agreed date of the Time of Completion of the Services, as well as all costs incurred by the OPCW in legal and non-legal proceedings, including those for legal assistance with regard to any circumstances as referred to under Sub-Clause 12.2 [Termination by the OPCW].

Additional costs incurred by the OPCW, resulting from the termination or from the Contractor's failure to take any steps required by the OPCW under Sub-Clause 12.3 [Consequences of Termination], may be withheld from any amount otherwise due to the Contractor by the OPCW.

The OPCW, at its own discretion, is legally and without intervention of the courts entitled to carry out itself or to have carried out any contractual obligation for which the Contractor is in default, or which the Contractor fails to comply with pursuant to this Sub-Clause 12.2, at the expense and risk of the Contractor.

12.4 OPCW's Entitlement to Termination

OPCW shall be entitled to terminate the Contract, in whole or in part, at any time for its convenience, and without being required to provide a justification thereof or to pay compensation, by giving a reasonable advance notice of such termination to the Contractor. The termination shall take effect 7 days after the date on which the Contractor receives this notice. The OPCW may terminate the Contract under this Sub-Clause in order to execute the Services himself or to arrange for the Services to be executed by another contractor or one of the OPCW's States Parties.

After this termination, the Contractor shall proceed in accordance with Sub-Clause 12.3 [Consequences of Termination], except that such actions shall be at the cost of the OPCW, and the Contractor shall be paid the amount of all work carried out to the date of termination.

13. Indemnities and Limitation of Liability

13.1 Indemnities

The OPCW shall not under any circumstances or for any reason whatsoever be held liable for loss, damage or injury sustained by the Contractor and its Personnel or by any person acting on behalf of the Contractor during the performance of the Contract or as a result of any of the actions undertaken by the Contract under Sub-Clause 12.2 [Consequences of Termination]. The OPCW shall not accept any claim for compensation or repairs in respect of any such damage.

The Contractor shall indemnify and hold harmless the OPCW and the States Parties to the CWC, the OPCW's Personnel, and their respective agents, against and from all claims, damages, losses and expenses (including legal fees and expenses) in respect of:

- a) bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the execution of the Services; and
- b) damage to or loss of any property (including environmental damage), real or personal, to the extent that such damage or loss arises out of or in the course of or by reason of the execution of the Services.

13.2 Intellectual and Industrial Property Rights

In this Sub-Clause, "infringement" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Services; and "claim" means a claim (or proceedings pursuing a claim) alleging an infringement.

The Contractor shall indemnify and hold the OPCW harmless against and from any other claim within the meaning of this Sub-Clause 13.2 that arises out of or in relation to the Contractor's execution of the Services.

Provided that the OPCW is entitled to be indemnified under this Sub-Clause, the Contractor may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration that may arise from it. OPCW shall, at the request and cost of the Contractor, assist in contesting the claim. The OPCW (and the OPCW Personnel) shall not make any admission that might be prejudicial to the Contractor, unless the Contractor failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by the OPCW.

13.3 Limitation of Liability

Neither Party shall be liable to the other Party for loss of use of any Services, loss of profit, loss of any contract or for any indirect or consequential loss or damage which may be suffered by the other Party in connection with the Contract, other than under Sub-Clause 12.3 [Consequences of Termination] and Sub-Clause 13.1 [Indemnities].

The total liability of the Contractor to the OPCW, under or in connection with the Contract other than under Sub-Clause 13.1 [Indemnities] and Sub-Clause 13.2 [Intellectual and Industrial Property Rights], shall not exceed the Contract Price stated in the Contract Agreement. Provided, however, that if the minimum statutory liability of the Contractor is greater than the Contract Price, the Contractor's limit of liability shall be such minimum statutory liability.

This Sub-Clause shall not limit liability in any case of fraud, deliberate default or reckless misconduct by the Contractor.

14. Insurance

- 14.1 The Contractor shall pay the OPCW promptly for all loss, destruction, or damage to the property of the OPCW 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.
- 14.2 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:
 - 14.2.1 insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - 14.2.2 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;
 - 14.2.3 liability insurance in an adequate amount to cover all third party 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,
 - 14.2.4 Environmental Impairment Liability insurance and any such other insurance as may be agreed upon in writing between the OPCW and the Contractor.
- 14.3 The Contractor's liability policies shall also cover subcontractors and all defense costs and shall contain a standard "cross liability" clause.
- 14.4 The Contractor acknowledges and agrees that the OPCW 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.
- 14.5 Except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by the OPCW, 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:
 - 14.5.1 name the OPCW as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy;
 - 14.5.2 include a waiver of subrogation of the Contractor's insurance carrier's rights against the OPCW;
 - 14.5.3 provide that the OPCW 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,
 - 14.5.4 include a provision for response on a primary and non-contributing basis with respect to any other insurance that may be available to the OPCW.
- 14.6 The Contractor shall be responsible to fund all amounts within any policy deductible or retention.
- 14.7 Except for any self-insurance program maintained by the Contractor and approved by the OPCW 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 OPCW. Prior to the commencement of any obligations under the Contract, the

Contractor shall provide the OPCW with evidence, in the form of certificate of insurance or such other form as the OPCW may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. The OPCW 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 14.5.3, above, the Contractor shall promptly notify the OPCW concerning any cancellation or material change of insurance coverage required under the Contract.

- 14.8 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.

15. Force Majeure

15.1 Notice of Force Majeure

The term force majeure ("Force Majeure") shall mean any irresistible and unforeseeable 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.

If a Party considers that he is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure including its probable duration and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given as soon as possible and not later than 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

The Party shall, having given notice, be relieved of liability for non-performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Clause, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract nor shall it apply to difficulties in the Contractor's performance related to the special nature of the Materials.

15.2 Duty to Minimize Delay

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall promptly give notice to the other Party when it ceases to be affected by the Force Majeure.

15.3 Consequences of Force Majeure

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Sub-Clause 15.2 [Notice of Force Majeure], and suffers delay by reason of such Force Majeure, the Contractor shall be entitled to an extension of time for any such delay, if completion is or will be delayed, under Sub-Clause 8.4 [Extension of Time for Completion]. However, the Contractor shall not be entitled to the payment under the Contract or of any additional Cost. Part-performance due to Force Majeure shall result in a pro-rata payment.

After receiving this notice, the OPCW shall proceed in accordance with Sub-Clause 3.5 [Determinations] to agree or determine these matters.

15.4 Force Majeure Affecting Subcontractor

If any Subcontractor is entitled under any contract or agreement relating to the Services to relief from force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

16. Arbitration

16.1 Arbitration

Without prejudice to the privileges and immunities of the OPCW, any legal dispute arising out of or in connection with this Contract shall be settled amicably by negotiation. Any dispute which cannot be settled by negotiation shall, at the request of either Party, be submitted to an Arbitration Board composed of: (i) two arbitrators, on being appointed by each of the Parties; and (ii) a chairman chosen by the two arbitrators. In the event of a disagreement as to the nomination of the chairman or a Party's failure to appoint an arbitrator, these appointments shall be made by the Secretary-General or the Permanent Court of Arbitration in The Hague. The Arbitration Board shall have its seat in The Hague and shall establish its own procedure. In the absence of contractual provisions, the arbitrators shall apply the UNCITRAL Arbitration Rules as in force on the day both Parties have signed the Contract. The decision of the arbitral tribunal shall be based on general principles of international commercial law. The arbitral tribunal shall have no authority to award punitive damages. In addition, the arbitral tribunal shall have no authority to award interest in excess of the London Inter-Bank Offered Rate ("LIBOR"), prevailing at the time the decision of the arbitral tribunal is issued, and any such interest shall be simple interest only. The Parties shall be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy or claim.

17. General Provisions

17.1 Communications

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, notices and requests, these communications shall be:

- a) in writing and delivered by hand (against receipt), sent by mail or courier, or fax or email and
- b) delivered, sent or transmitted to the address for the recipient's communications as stated below. However:
 - i. if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - ii. if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents and determinations shall not be unreasonably withheld or delayed.

If to the OPWC:

If to the Contractor:

17.2 Language

If there are versions of any part of the Contract which are written in more than one language, the English version shall prevail. The language for communications shall be English.

17.3 Priority of Documents

The documents forming the Contract (“Contract documents”) are to be taken as mutually explanatory of one another and are deemed to form and be read and construed as an integral part of the Contract.

For the purposes of interpretation, the priority of the documents shall be in accordance with the following sequence:

- a) the Contract Agreement;
- b) these Conditions of Contract;
- c) the Scope of Requirements; and
- d) [the Proposal] and any other documents forming part of the Contract.

In the event of any inconsistencies, conflicts, or discrepancies between or among the Contract documents, this Contract shall be interpreted on the basis of the above order of priority of the Contract documents.

17.4 Entry into Force and Effect

The Contract shall come into full force and effect on the date stated in the Contract Agreement.

17.5 Assignment

Neither Party shall assign the whole or any part of the Contract or any benefit or interest in or under the Contract. However, either Party:

- a) may assign the whole or any part with the prior agreement of the other Party, at the sole discretion of such other Party; and
- b) may, as security in favour of a bank or financial institution, assign its right to any moneys due, or to become due, under the Contract.

17.6 Confidentiality

The Contractor, or its Personnel, shall not use any information acquired or developed in the course of this Contract for any purpose not authorised in writing by the OPCW.

The Contractor is required to exercise the utmost discretion during the performance of the Contract. The Contractor may not communicate to any other person, government or authority external to the OPCW any information known to it by reason of his contractual relationship with the OPCW which has not previously been made public, except with written authorisation of the OPCW. Nor shall the Contractor at any time use such

information to private advantage. The Contractor shall not publish, permit to be published, or disclose any particulars of the Services in any trade or technical paper or elsewhere without the previous agreement of OPCW.

The obligations under this Article do not lapse upon cessation of this Contract between the Contractor and the OPCW.

The Contractor shall be liable for any breach of confidentiality or any indirect disclosure which could vitiate the interests of the OPCW. The extent of any such liability shall be directly proportional to the extent of the damage caused.

Both Parties shall treat the details of this Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with applicable Laws.

17.7 Severance

Any term or condition found to be ineffective, illegal or unenforceable due to any reason shall have no impact on other the terms and conditions in this Contract. Such ineffective, illegal or unenforceable term or condition shall be deemed to have been severed from this Contract when interpreting the rest of the provisions.

17.8 Compliance with Laws

The Contractor shall, in performing the Contract, comply with applicable Laws. In this regard, the Contractor shall give all notices, pay all taxes, duties and fees, and obtain all permits, licences and approvals, as required by the Laws in relation to the execution of the Services; and the Contractor shall indemnify and hold OPCW harmless against and from the consequences of any failure to do so.

17.9 Advertising

The Contractor shall not advertise or otherwise make public the fact that it is supplying services to the OPCW. The Contractor shall not use the name, emblem or official seal of the OPCW or any abbreviation of the names of the OPCW for advertising or for any other promotional purpose.

17.10 Amendments and Additions to the Contract

The provisions of the Contract and the annexes thereto may be amended or supplemented only by means of a supplementary written agreement signed by all of the parties or their authorised representatives.

17.11 Officials not to Benefit

(a) The OPCW warrants that no official or employee of the Contractor has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this Contract.

(b) The Contractor warrants that no official or employee of the OPCW has been or shall be admitted by it to any direct or indirect benefit arising from this Contract or the award thereof. Failure to comply with the foregoing provision shall constitute a material breach of this Contract.

17.12 Privileges and Immunities

Nothing contained in the contract shall be deemed a waiver, express or implied, of any privilege or immunity that the OPCW may enjoy pursuant to: (i) the Agreement between the OPCW and the Kingdom of the Netherlands concerning the Headquarters of the OPCW, signed at The Hague on 22 May 1997, ('Headquarters Agreement'); or (ii) any other agreement to which the OPCW is party.