



GENERAL CONDITIONS OF CONTRACT

CONTRACTS FOR THE PROVISION OF GOODS

1. **LEGAL STATUS OF THE PARTIES:** The IAEA and the Contractor shall also each be referred to as a “Party” and collectively as “Parties” hereunder, and:
 - 1.1 Pursuant, *inter alia*, to the Statute of the IAEA, the IAEA 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 IAEA, 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. **ASSIGNMENT:**
 - 2.1 Except as provided in Article 2.2, 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 IAEA. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, shall not be binding on the IAEA. 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 IAEA. Any such unauthorized delegation, or attempt to do so, shall not be binding on the IAEA.
 - 2.2 The Contractor may assign or otherwise transfer the Contract to the surviving entity resulting from a reorganization of the Contractor’s operations; *provided that:*
 - 2.2.1 such reorganization is not the result of any bankruptcy, receivership or other similar proceedings; *and*
 - 2.2.2 such reorganization arises from a sale, merger, or acquisition of all or substantially all of the Contractor’s assets or ownership interests; *and*
 - 2.2.3 the Contractor promptly notifies the IAEA about such assignment or transfer at the earliest opportunity; *and*
 - 2.2.4 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 IAEA following the assignment or transfer.
3. **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 IAEA. The IAEA shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the IAEA reasonably considers is not qualified to perform obligations under the Contract. The IAEA shall have the right to require any subcontractor’s removal from IAEA 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:

4.1 DELIVERY OF GOODS: The Contractor shall hand over or make available the goods, and the IAEA 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 IAEA 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 IAEA 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 IAEA. Unless expressly authorized by the IAEA, the Contractor shall not make partial deliveries.

4.2 INSPECTION OF THE GOODS: If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify the IAEA when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, the IAEA 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 IAEA 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.

4.3 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 and, where appropriate, the relevant international modal dangerous goods regulations, including, at a minimum, the “Regulations for the Safe Transport of Radioactive Material”, 2012 Edition, SSR-6 and any revisions thereto. 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 IAEA 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.

4.4 TRANSPORTATION & FREIGHT; TRANSPORTATION HANDLING, STORAGE AND USE OF RADIOACTIVE MATERIAL:

4.4.1 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 IAEA receives all necessary transport documents in a timely manner so as to enable the IAEA to take delivery of the goods in accordance with the requirements of the Contract.

4.4.2 The Contractor shall take all appropriate measures to ensure the safety and security of the radioactive material during its transport, handling, storage and use.

4.4.3 For contracts involving radioactive material other than nuclear material, the Contractor undertakes that adequate security measures and systems shall be maintained with respect to the radioactive material. These measures and systems shall, as a minimum, provide protection

comparable to that set forth in IAEA Nuclear Security Series No. 14, entitled “Nuclear Security Recommendations on Radioactive Material and Associated Facilities” and No. 9, entitled “Security in the Transport of Radioactive Material”, as they may be revised from time to time.

4.4.4 For contracts involving nuclear material, the Contractor undertakes that adequate physical protection measures and systems shall be maintained with respect to nuclear material and any special fissionable material produced through its use, including subsequent generations of produced special fissionable material. These measures and systems shall as a minimum provide protection comparable to that set forth in IAEA Nuclear Security Series No. 13, entitled “Nuclear Security Recommendations on Physical Protection of Nuclear Material and Nuclear Facilities (INFCIRC/225/Revision 5)”, as it may be revised from time to time.

4.4.5 In addition to Article 4.3 above, the Contractor shall ensure that the:

4.4.5.1. radioactive material is packed appropriately for the modes of transport to be used (air, sea and/or land) in accordance with the certificate of approval for package design and shipment issued by the relevant competent authorities; *and*

4.4.5.2. radioactive material is loaded, marked, labelled and transported, and where appropriate, the conveyance placarded, in accordance with the relevant national and international modal regulations for dangerous goods and, at a minimum, in accordance with the “Regulations for the Safe Transport of Radioactive Material”, 2012 Edition, SSR-6, as it may be revised from time to time; *and*

4.4.5.3. consignment has all transport documents, including instructions for the carrier for use in the event of a transport accident or nuclear security event, an appropriate consignor's declaration, information for carriers and any notifications of competent authorities as required by the applicable law. The Contractor shall have in its possession a copy of each approval certificate and a copy of the instructions with regard to the proper closing of the package and other preparations for shipment before initiating any shipment; *and*

4.4.5.4. without prejudice to the aforementioned, the Contractor shall ensure that each package is marked with the following information in English: case No.; gross/net weight (kg); the centre of gravity (only for goods over two (2) tons); the applicable UN marking; measurement, length x width x height x (mm) and shipping marks such as “handle with care”, “right side up” and other appropriate international shipping marks.

4.4.6 Necessary protective measures shall be taken by the Contractor to prevent damage from moisture, rain, rust, shock and corrosion according to the different characteristics and requirements of the radioactive material in order to ensure that the radioactive material remains in a safe and sound condition.

4.5 PRODUCT WARRANTIES:

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

4.5.1.1 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; *and*

4.5.1.2 if the Contractor is not the original manufacturer of the goods, the Contractor shall provide the IAEA with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

4.5.1.3 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; *and*

4.5.1.4 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; *and*

4.5.1.5 the goods are new and unused;

4.5.2 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 IAEA in accordance with the Contract.; *and*

4.5.3 During any period in which the Contractor's warranties are effective, upon notice by the IAEA 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, at the discretion of the IAEA, 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 IAEA for the purchase price paid for the defective goods.

4.5.4 The Contractor shall remain responsive to the needs of the IAEA for any services that may be required in connection with any of the Contractor's warranties under the Contract.

4.5.5 Except as otherwise provided in the Contract, spare parts shall be kept available by the Contractor for five (5) years after the completion of the Contract.

4.6 ACCEPTANCE OF GOODS: Under no circumstances shall the IAEA be required to accept any goods that do not conform to the specifications or requirements of the Contract. The IAEA 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 IAEA be obligated to accept any goods unless and until the IAEA has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that the IAEA shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until the IAEA in fact provides such written acceptance. In no case shall payment by the IAEA in and of itself constitute acceptance of the goods.

4.7 REJECTION OF GOODS:

4.7.1 Notwithstanding any other rights of, or remedies available to the IAEA 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 IAEA, at its sole option, may reject or refuse to accept the goods, and within thirty (30) days following receipt of notice from the IAEA of such rejection or refusal to accept the goods, the Contractor shall, at the sole option of the IAEA:

4.7.1.1 provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by the IAEA; *or*

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

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

4.7.1.4 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 IAEA.

4.7.2 In the event that the IAEA elects to return any of the goods for the reasons specified in Article 4.7, above, the IAEA may procure the goods from another source. In addition to any other rights or remedies available to the IAEA 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 IAEA shall be entitled to compensation from the Contractor for any reasonable expenses incurred for preserving and storing the goods for the Contractor's account.

4.8 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 IAEA upon delivery of the goods and their acceptance by the IAEA in accordance with the requirements of the Contract.

4.9 EXPORT LICENSES:

4.9.1 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 IAEA 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 IAEA, the IAEA 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 IAEA to enable the IAEA to take appropriate measures to resolve the matter.

4.9.2 In addition to the provisions in Article 4.9.1, above, the Contractor acknowledges and agrees that, with respect to any obligations related to the export or transportation or delivery of dangerous goods or radioactive materials to any country indicated by the Contract as recipient of such goods or materials, any delays or failure to perform such obligations arising from or relating to missing or delayed authorization or permissions shall not, in and of itself, constitute a cause of *force majeure* under the Contract.

5. OBLIGATIONS OF THE CONTRACTOR:

5.1 The Contractor shall:

5.1.1 perform its obligations under the Contract in accordance with applicable laws, norms, standards and regulations; *and*

5.1.2 perform its obligations in good faith and comply with both the express requirements of the IAEA, as defined in the Contract, and all obligations arising from the nature and purpose of the Contract; *and*

5.1.3 procure tools, materials and personnel as necessary for the proper performance of the Contract; *and*

5.1.4 be responsible for the conduct and professional competence of the personnel it assigns to perform under the Contract and ensure that its personnel respect all applicable laws and regulations, conform to a high standard of moral and ethical conduct and comply with the IAEA security requirements and instructions when at IAEA premises; *and*

5.1.5 obtain and maintain all permits, licenses and/or authorizations as required by applicable laws and regulations and as necessary for the performance of its obligations under the Contract.

5.2 In the event of failure to obtain the permits, licenses and/or authorizations required under Article 5.1.5, above within a reasonable time after the signature of the Contract, depending on the nature and the scope of the Contract, the IAEA may declare the Contract void or terminate the Contract for the part not performed.

6. INDEMNIFICATION:

6.1 The Contractor shall indemnify, defend, and hold and save harmless, the IAEA, 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 IAEA, 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 IAEA of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the IAEA 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 IAEA 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 IAEA or another party acting under the direction of the IAEA 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 IAEA 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 IAEA 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 IAEA or any matter relating thereto, for which only the IAEA itself is authorized to assert and maintain. The IAEA 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 IAEA of any goods, property or services provided or licensed to the IAEA 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 IAEA the unrestricted right to continue using such goods or services provided to the IAEA; *or*
 - 6.5.2** replace or modify the goods or services provided to the IAEA, 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 IAEA the full price paid by the IAEA for the right to have or use such goods, services, or part thereof.

7. INSURANCE AND LIABILITY:

- 7.1** The Contractor shall pay the IAEA promptly for all loss, destruction, or damage to the property of the IAEA 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; *and*
 - 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; *and*
 - 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 IAEA 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 IAEA 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 IAEA, 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 IAEA as an additional insured under the liability policies, including, if required, as a separate endorsement under the policy; *and*
 - 7.5.2** include a waiver of subrogation of the Contractor's insurance carrier's rights against the IAEA; *and*
 - 7.5.3** provide that the IAEA 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 IAEA.
- 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 IAEA 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 IAEA. Prior to the commencement of any

obligations under the Contract, the Contractor shall provide the IAEA with evidence, in the form of certificate of insurance or such other form as the IAEA may reasonably require, that demonstrates that the Contractor has taken out insurance in accordance with the requirements of the Contract. The IAEA 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 IAEA 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.

8. 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 IAEA 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 IAEA.

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

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 IAEA does not and shall not claim any ownership interest thereto, and the Contractor grants to the IAEA 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 IAEA, 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 IAEA 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 IAEA, shall be made available for use or inspection by the IAEA at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to IAEA authorized officials on completion of work under the Contract.

10.5 Notwithstanding the foregoing provisions for software products and/or source codes that are

proprietary of the Contractor and have to be provided as-is, integrated or customized under the Contract, the Parties may agree on different terms for the license in a separate software license agreement.

- 11. PUBLICITY; USE OF THE NAME, EMBLEM OR OFFICIAL SEAL OF THE IAEA:** The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the IAEA, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the IAEA, or any abbreviation of the name of the IAEA in connection with its business or otherwise without the written permission the IAEA.
- 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 highly confidential, confidential and/or restricted (“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.
 - 12.3** As a general rule, all technical and financial information and other documentation and data received from the IAEA under the Contract shall be treated as confidential and shall be subject to the provisions of this Article 12.
 - 12.4** The Contractor may disclose Information to the extent required by law, judicial order or national authority; *provided that*, subject to and without any waiver of the privileges and immunities of the IAEA, the Contractor will give the IAEA sufficient prior notice of a request for the disclosure of Information in order to allow the IAEA to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made.
 - 12.5** The IAEA may disclose Information to the extent as required pursuant to the Statute of the IAEA, or pursuant to resolutions or regulations of the General Conference or the Board of Governors, or rules promulgated thereunder.
 - 12.6** The Recipient shall not be precluded from disclosing Information that: (i) is obtained by the Recipient from a third party without restriction, (ii) is disclosed by the Discloser to a third party without any obligation of confidentiality, (iii) is previously known by the Recipient, or (iv) at any time is developed by the Recipient completely independently of any disclosures hereunder.

- 12.7 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 IAEA 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 IAEA 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 from the date of receipt by the IAEA of the relevant notice or of the IAEA becoming aware, by other means, of the Contractor's inability.
- 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.

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 In addition, the IAEA may terminate the Contract at any time by providing written notice to the Contractor in any case in which the mandate of the IAEA applicable to the performance of the Contract or the funding of the IAEA applicable to the Contract is curtailed or terminated, whether in whole or in part. In addition, unless otherwise provided in the Contract, upon sixty (60) days' advance written notice to the Contractor, the IAEA 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 IAEA, the Contractor shall, except as may be directed by the IAEA 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; *and*
- 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; *and*

- 14.3.3** place no further subcontracts or orders for materials, services, or facilities, except as the IAEA and the Contractor agree in writing are necessary to complete any portion of the Contract that is not terminated; *and*
 - 14.3.4** terminate all subcontracts or orders to the extent they relate to the portion of the Contract terminated; *and*
 - 14.3.5** if required by the IAEA, transfer title and deliver to the IAEA the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced or acquired for the portion of the Contract terminated; *and*
 - 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 IAEA 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 IAEA 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 IAEA has or may be reasonably expected to acquire an interest.
- 14.4** In the event of any termination of the Contract, the IAEA 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 IAEA shall not be liable to pay the Contractor except for those goods delivered and services provided to the IAEA 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 IAEA or prior to the Contractor's tendering of notice of termination to the IAEA. In no event shall the IAEA be liable to pay the Contractor an amount greater than the Contract Price.
- 14.5** The IAEA 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; *or*
 - 14.5.2** the Contractor is granted a moratorium or a stay, or is declared insolvent; *or*
 - 14.5.3** the Contractor makes an assignment for the benefit of one or more of its creditors; *or*
 - 14.5.4** a Receiver is appointed on account of the insolvency of the Contractor; *or*
 - 14.5.5** the Contractor offers a settlement in lieu of bankruptcy or receivership; *or*
 - 14.5.6** the Contractor commits a fundamental breach of the terms of the Contract and fails to remedy the situation within a reasonable period of time upon the IAEA's written request; *or*
 - 14.5.7** there is a breach by the Contractor of Articles 3 "Subcontracting", 11 "Publicity; Use of the Name, Emblem or Official Seal of the IAEA", 12 "Confidential Nature of Documents and Information", 25 "Officials not to Benefit", 30 "Child Labour", 31 "Mines", and 32 "Terrorism"; *or*
 - 14.5.8** the IAEA 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** In case of termination under Article 14.5 above, the IAEA shall have the right, at its own option to:
- 14.6.1** have the work performed under its direct responsibility, in which case the Contractor shall be

obliged to pay all additional costs to the IAEA; *or*

14.6.2 have the work performed by a third party, in which case the Contractor shall be obliged to pay all additional costs to the IAEA; *or*

14.6.3 have the work terminated, in which case, the IAEA shall be entitled to full compensation for all damages and costs caused by the Contractor's non-fulfillment of its contractual obligations.

14.7 Except as prohibited by law, the Contractor shall be bound to compensate the IAEA for all damages and costs, including, but not limited to, all costs incurred by the IAEA 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 IAEA of the occurrence of any of the events specified in Article 14.5, above, and shall provide the IAEA with any information pertinent thereto.

14.8 The provisions of this Article 14 are without prejudice to any other rights or remedies of the IAEA under the Contract or otherwise with particular reference to claims for damages and losses.

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 IAEA shall have no obligation to purchase any minimum quantities of goods or services from the Contractor, and the IAEA 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 place of arbitration shall be Vienna, Austria. The language of the arbitration shall be English. 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 accorded to the IAEA by its Member States.

19. TAX EXEMPTION:

19.1 The Contractor shall not invoice or charge the IAEA for any taxes, fees or duties, unless required to do so by the relevant national authorities after consideration of the privileges and immunities accorded to the IAEA by its Member States. Any such requirement shall be in writing and submitted to the IAEA. The Contractor shall collaborate with the IAEA on a best efforts basis in order to achieve tax exemption in the relevant country. If it is determined that any exempt taxes have nevertheless been included in the price, the IAEA may deduct the exempt amount at the time of payment. Payment of such reduced amount shall constitute full payment by the IAEA.

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

19.3 The IAEA is exempted from Value Added Tax (VAT) in the territory of the European Union (EU) in accordance with EU Directive 2006/112/EC, Article 151 (1) (b) as amended by EU Council Directive 2009/162/EU. Contractors located in EU countries shall not include VAT in the invoices to the IAEA. VAT will not be paid by the IAEA to EU Contractors. Only Contractors located in Austria will be paid the net amount plus VAT. Contractors should refer on the invoice to the above EU Directive or to the relevant VAT law applicable in the Contractor's country. The IAEA will provide a certificate of exemption only upon request.

20. MODIFICATIONS:

20.1 No modification or change in the Contract shall be valid and enforceable against the IAEA unless provided by a valid written amendment to the Contract signed by the Contractor and the duly authorized IAEA official.

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 IAEA nor in any way shall constitute an agreement by the IAEA 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 IAEA under the Contract shall be subject to audit by auditors, whether internal or external, of the IAEA or by other authorized and qualified agents of the IAEA at any time during the term of the Contract and for a period of five (5) years following the expiration or prior termination of the Contract. The IAEA shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the IAEA other than in accordance with the terms and conditions of the Contract.

21.2 The IAEA may conduct audits and 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 five (5) 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, 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 IAEA 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, audits or investigations carried out by the IAEA hereunder.

22. LIMITATION ON ACTIONS:

22.1 Except with respect to any indemnification obligations in Article 6 "Indemnification", above, or as are otherwise set forth in the Contract, any arbitral proceedings in accordance with Article 17 "Settlement of Disputes", above, arising out of the Contract must be commenced within three (3) years after the cause of action has accrued.

22.2 The Parties further acknowledge and agree that, for purposes of Article 22.1, above, 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 3 "Subcontracting", 11 "Publicity; Use of the Name, Emblem or Official Seal of the IAEA", 12 "Confidential Nature of Documents and Information", 25 "Officials not to Benefit", 30 "Child Labour", 31 "Mines", and 32 "Terrorism" constitutes an essential term of the Contract and that any breach of any of these provisions shall entitle the IAEA to terminate the Contract or any other contract with the IAEA 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 IAEA in connection with the performance of its obligations under the Contract. Should any authority external to the IAEA seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the IAEA and provide all reasonable assistance required by the IAEA. 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 IAEA, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the IAEA.

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 IAEA any direct or indirect benefit arising from or related to the performance of the Contract or of any other contract with the IAEA or the award thereof or for any other purpose intended to gain an advantage for the Contractor. The Contractor agrees that breach of this provision may lead, at the IAEA's sole discretion, to the annulment of the Contract irrespective of any work performed. The annulment shall exclude any right of the Contractor to claim any payment, even for work already performed. All delivered goods, whether used or not, will be returned at the Contractor's expense. The annulment will be without prejudice to any further remedies that the IAEA may be entitled to under the Contract or at law with particular reference to refund of payments already made, claims for damages and losses occurred, bribery, and fraud. The provisions under this Article 25 shall also apply with respect to any subcontractor for the part of work related to such subcontractor.

26. **OBSERVANCE OF THE LAW:** The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the Contract. In addition, the Contractor shall maintain compliance with all obligations relating to its registration as a qualified vendor of goods or services to the IAEA.
27. **NOTICES:** All notices and other official communications under this Contract shall be in English and shall be valid if sent by registered mail, fax or by email with return receipt to the other Party at the addresses indicated in the Contract.
28. **COMPLETION OF CONTRACT:** The Contract shall be considered complete when all terms and conditions have been complied with by the Parties and the Parties have discharged their reciprocal obligations. If the Contract is valid for a limited period of time, the expiration of the period of validity in itself shall not relieve any Party of completing obligations still pending at the date of expiration.
29. **SURVIVAL:** The obligations set forth in Articles 6 “Indemnification”, 11 “Publicity; Use of the Name, Emblem or Official Seal of the IAEA”, 12 “Confidential Nature of Documents and Information”, 17 “Settlement of Disputes”, 18 “Privileges and Immunities”, 21 “Audits and Investigations”, and 25 “Officials not to Benefit” shall survive the completion, expiration or termination of the Contract.
30. **CHILD LABOUR:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor’s subsidiary or affiliated entities (if any) is engaged in any practice inconsistent with the rights set forth in the Convention on the Rights of the Child, including Article 32 thereof, which, *inter alia*, requires that a child shall be protected from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral, or social development.
31. **MINES:** The Contractor represents and warrants that neither it, its parent entities (if any), nor any of the Contractor’s subsidiaries or affiliated entities (if any) is engaged in the sale or manufacture of anti-personnel mines or components utilized in the manufacture of anti-personnel mines.
32. **TERRORISM:** The Contractor shall ensure that none of the funds received from the IAEA under the Contract are used, directly or indirectly, to provide support to individual or entities subject to sanctions or other measures promulgated by the United Nations Security Council and appearing in the Consolidated United Nations Security Council Sanctions List. This provision shall be included in all sub-contracts or sub-agreements entered into under the Contract.

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