

## **Annex II**

### **Conditions of Service for Consultant Contract**

#### **Legal Status**

1. The Contractor shall have the legal status of an independent contractor vis-à-vis the United Nations University (“UNU”), and shall not be regarded, for any purposes, as being either a “staff member” of the United Nations, under the Staff Regulations and Rules of the United Nations, or an “official” of the United Nations, for purposes of the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly of the United Nations on 13 February 1946. Accordingly, nothing within or relating to the Contract shall establish the relationship of employer and employee, or of principal and agent, between the UNU and the Contractor. The personnel, officials, representatives, employees or subcontractors of the UNU and of the Contractor, if any, shall not be considered in any respect as being the employees or agents of the other, and the UNU and the Contractor shall be solely responsible for all claims arising out of or relating to its engagement of such persons or entities.

2. The Conditions of Service for the Contract shall be an integral part of the Personnel Policy of the United Nations University approved by the UNU Council at its fiftieth Session on 5 December 2003 amended at its fifty-sixth session in December 2009, and further amended at its sixty-third session in May 2015.

#### **Standards of Conduct**

3. The Contractor shall neither seek nor accept instructions from any authority external to the UNU in connection with the performance of its obligations under the Contract. Should any authority external to the UNU seek to impose any instructions on the Contractor regarding the Contractor’s performance under the Contract, the Contractor shall promptly notify the UNU and shall provide all reasonable assistance required by the UNU. The Contractor shall not take any action in respect of its performance of the Contract or otherwise related to its obligations under the Contract that may adversely affect the interests of the UNU, and the Contractor shall perform his/her obligations under the Contract with the fullest regard to the interests of the UNU. The Contractor warrants that he/she has not and shall not offer any direct or indirect benefit arising from or related to the performance of the Contract or the award thereof to any representative, official, member of the personnel, employee or other agent of the UNU. The Contractor shall comply with all laws, ordinances, rules and regulations bearing upon the performance of his/her obligations under the Contract.

4. The Contractor shall comply with the standards of conduct set forth in the SecretaryGeneral’s bulletin ST/SGB/2003/13 of 9 October 2003, concerning “Special measures for protection from sexual exploitation and sexual abuse”. In particular, the Contractor shall not engage in any conduct that would constitute sexual exploitation or sexual abuse, as defined in that bulletin.

5. The Contractor acknowledges and agrees that any breach of any of the provisions hereof shall constitute a breach of an essential term of the Contract, and, in addition to 21 any other legal rights or remedies available to any person, shall give rise to grounds for termination of the Contract. In addition, nothing herein shall limit the right of the UNU to refer any alleged breach of the foregoing standards of conduct to the relevant national authorities for appropriate legal action.

### **Title Rights**

6. The UNU shall be entitled to all property rights, including but not limited to patents, copyrights and trademarks, with regard to material which bears a direct relation to, or is made in consequence of, the services provided to the University by the contractor. The retention or exercise of such rights may be subject to special arrangement between the parties. Any material published by, or on behalf of, the contractor in this regard shall contain appropriate reference to the UNU, and a copy of such published material shall be provided to the UNU. At the request of the UNU, contractors shall assist in securing such property rights and transferring them to the UNU in compliance with the requirements of the applicable law.

### **Confidential Nature of Documents and Information**

7. Information and data that are considered proprietary by either the UNU or the Contractor or that are delivered or disclosed by one of them ("Discloser") to the other ("Recipient") during the course of performance of the Contract, and that are designated as confidential ("Information"), shall be held in confidence and shall be handled as follows. The Recipient of such Information shall 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 the Recipient may otherwise use the Discloser's Information solely for the purpose for which it was disclosed. The Recipient may disclose confidential Information to any other party with the Discloser's prior written consent, as well as to the Recipient's employees, officials, representatives and agents who have a need to know such confidential Information solely for purposes of performing obligations under the Contract. Subject to and without any waiver of the privileges and immunities of the UNU, the Contractor may disclose Information to the extent required by law, provided that the Contractor will give the UNU sufficient prior notice of a request for the disclosure of Information in order to allow the UNU to have a reasonable opportunity to take protective measures or such other action as may be appropriate before any such disclosure is made. The UNU may disclose Information to the extent as required pursuant to the Charter of the United Nations University, Statutes, regulations, rules or policies. The Recipient shall not be precluded from disclosing Information that is obtained by the Recipient from a third party without restriction, is disclosed by the Discloser to a third party without any obligation of confidentiality, is previously known by the Recipient, or at any time is developed by the Recipient completely independently of any disclosures hereunder. 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.

### **Travel, Medical Clearance and Service-Incurred Death, Injury or Illness**

8. The UNU may require the Contractor to submit a statement of good health prior to 22 commencement of work in any offices or premises of the UNU or before engaging in any travel required by the UNU or connected with the performance of the Contract. The Contractor shall provide such a statement of good health as soon as practicable following such request, and prior to engaging in any such travel, and the Contractor warrants the accuracy of any such statement, including, but not limited to, confirmation that the Contractor has been fully informed regarding the requirements for inoculations for the country or countries to which travel may be authorized.

9. In the event of the death, injury or illness of the Contractor which is attributable to the performance of services on behalf of the UNU under the terms of the Contract while the Contractor is travelling at UNU expense or is performing any services under the Contract in any offices or premises of the UNU,

the Contractor or the Contractor's dependants, as appropriate, shall be entitled to compensation equivalent to that provided under Appendix D to the United Nations Staff Rules (ST/SGB/Staff Rules/Appendix D/Rev.1 and Amend.1).

#### **Prohibition on Assignment; Modifications**

10. The Contractor may not assign, delegate, transfer, pledge or make any other disposition of the Contract, of any part thereof, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the UNU, and any attempt to do so shall be null and void. The terms or conditions of any supplemental undertakings, licenses or other forms of agreement concerning any goods or services to be provided under the Contract shall not be valid and enforceable against the UNU nor in any way shall constitute an agreement by the UNU thereto, unless any such undertakings, licenses or other forms of agreement are the subject of a valid written undertaking by the UNU. No modification or change in the Contract shall be valid and enforceable against the UNU unless provided by means of a valid written amendment to the Contract signed by the Contractor and an authorized official or appropriate contracting authority of the UNU.

#### **Subcontractors**

11. 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 UNU for any such subcontractors. The UNU may, in its sole discretion, reject any proposed subcontractor or require such subcontractor's removal without having to give any justification therefor, and such rejection shall not entitle the Contractor to claim any delays in the performance, or to assert any excuses for the nonperformance, of any of its obligations under the Contract. The Contractor shall be solely responsible for all services and obligations performed by his/her 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.

#### **Use of Name, Emblem or Official Seal of the United Nations**

12. The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that he/she has a contractual relationship with the UNU, nor shall the Contractor, in any manner whatsoever, use the name, emblem or official seal of the United Nations University, or any abbreviation of the name of the United Nations University, in connection with his/her business or otherwise without the written permission of the UNU.

#### **Indemnification**

13. The Contractor shall indemnify, defend, and hold and save harmless the UNU, and its officials, agents and employees, from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature, including, but not limited to, all litigation costs and expenses, attorney's fees, settlement payments and damages, based on, arising from, or relating to: (a) allegations or claims that the use by the UNU of any patented device, any copyrighted material or any other goods or services provided to the UNU for its use under the terms of the Contract, in whole or in part, separately or in combination, constitutes an infringement of any patent, copyright, trademark or other intellectual property right of any third party; or (b) 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.

### **Insurance**

14. The Contractor shall pay the UNU promptly for all loss, destruction or damage to the property of the UNU caused by the Contractor, or of any subcontractor, or anyone directly or indirectly employed by them in the performance of the Contract. The Contractor shall be solely responsible for taking out and for maintaining adequate insurance required to meet any of his/her obligations under the Contract, as well as for arranging, at the Contractor's sole expense, such life, health and other forms of insurance as the Contractor may consider to be appropriate to cover the period during which the Contractor provides services under the Contract. The Contractor acknowledges and agrees that none of the insurance arrangements the Contractor may make shall, in any way, be construed to limit the Contractor's liability arising under or relating to the Contract.

### **Encumbrances and Liens**

15. 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 UNU against any monies due to the Contractor or to 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.

### **Force Majeure; Other Changes in Conditions**

16. In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to the UNU of such occurrence or cause if the Contractor is thereby rendered unable, wholly or in part, to perform his/her obligations and meet his/her responsibilities under the Contract. The Contractor shall also notify the UNU of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with his/her 24 performance of the Contract. Not more than fifteen (15) days following the provision of such notice of force majeure or other changes in conditions or occurrence, the Contractor shall also submit a statement to the UNU of estimated expenditures that will likely be incurred for the duration of the change in conditions or the event. On receipt of the notice or notices required hereunder, the UNU shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform any obligations under the Contract.

17. If the Contractor is rendered permanently unable, wholly or in part, by reason of force majeure to perform his/her obligations and meet his/her responsibilities under the Contract, the UNU shall have the right to suspend or terminate the Contract on the same terms and conditions as are provided for below, under "Termination", except that the period of notice shall be five (5) days instead of any other period of notice. In any case, the UNU shall be entitled to consider the Contractor permanently unable to perform his/her obligations under the Contract in the case of the Contractor's suffering any period of suspension in excess of thirty (30) days.

18. Force majeure as used herein means any unforeseeable and irresistible act of nature, any act of war (whether declared or not), invasion, revolution, insurrection, 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.

### **Duration**

19. The Contractor shall be required to perform specific, results-oriented functions within a prescribed time frame consistent with the work plan of the office concerned. Duration of the contract shall be directly linked to the terms of reference and work assignment set out in the Contract.

20. The services of a consultant shall be limited to twenty-four months of accrued service within a period of thirty-six calendar months.

### **Termination**

21. Either party may terminate the Contract, in whole or in part, upon giving written notice to the other party. The period of notice shall be five (5) days in the case of contracts for a total period of less than two (2) months and fourteen (14) days in the case of contracts for a longer period. The initiation of conciliation or arbitral proceedings, as provided below, shall not be deemed to be a "cause" for or otherwise to be in itself a termination of the Contract. The UNU may, without prejudice to any other right or remedy available to it, terminate the Contract forthwith in the event that: (a) the Contractor is adjudged bankrupt, or is liquidated, or becomes insolvent, applies for moratorium or stay on any payment or repayment obligations, or applies to be declared insolvent; (b) the Contractor is granted a moratorium or a stay or is declared insolvent; the Contractor makes an assignment for the benefit of one or more of its creditors; (c) a Receiver is appointed on account of the insolvency of the Contractor; (d) the Contractor offers a settlement in lieu of bankruptcy or receivership; or (e) the UNU reasonably determines that the Contractor has become subject to a materially adverse change in his/her financial condition that threatens to endanger or otherwise substantially affect the ability of the Contractor to perform any of his/her obligations under the Contract.

22. In the event of any termination of the Contract, upon receipt of notice of termination by the UNU, the Contractor shall, except as may be directed by the UNU in the notice of termination or otherwise in writing: (a) 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; (b) refrain from undertaking any further or additional commitments under the Contract as of and following the date of receipt of such notice; (c) 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 UNU thereunder; (d) complete performance of the work not terminated; and (e) take any other action that may be necessary, or that the UNU may direct in writing, 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 UNU has or may be reasonably expected to acquire an interest.

23. In the event of a Contract being terminated prior to its due expiry date in this way, the Contractor shall be remunerated on a pro rata basis for no more than the actual number of days worked or amount of work performed to the satisfaction of the UNU in accordance with the requirements of the Contract. Additional costs incurred by the UNU resulting from the termination of the Contract by the Contractor may be withheld from any amount due to him or her by the UNU.

### **Non-Exclusivity**

24. The UNU shall have no obligation respecting, and no limitations on, its right to obtain goods of the same kind, quality and quantity, or to obtain any services of the kind described in the Contract, from any other source at any time.

### **Taxation**

25. Article II, section 7, of the Convention on the Privileges and Immunities of the United Nations provides, inter alia, that the United Nations, including UNU, is exempt from all direct taxes, except charges for public utility services, and is exempt from customs restrictions, duties and charges of a similar nature in respect of articles imported or exported for its official use. In the event any governmental authority refuses to recognize the exemptions of the UNU from such taxes, restrictions, duties or charges, the Contractor shall immediately consult with the UNU to determine a mutually acceptable procedure. The UNU shall have no liability for taxes, duties or other similar charges payable by the Contractor in respect of any amounts paid to the Contractor under this Contract, and the Contractor acknowledges that the UNU will not issue any statements of earnings to the Contractor in respect of any such payments.

### **Settlement of Disputes**

26. The UNU and the Contractor 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.

27. Any dispute, controversy or claim between the parties arising out of the Contract, or the breach, termination, or invalidity thereof, unless settled amicably, as provided above, shall be referred by either of the parties to arbitration in accordance with the UNCITRAL Arbitration Rules then obtaining. The decisions of the arbitral tribunal shall be based on general principles of international commercial law. For all evidentiary questions, the arbitral tribunal shall be guided by the Supplementary Rules Governing the Presentation and Reception of Evidence in International Commercial Arbitration of the International Bar Association, 28 May 1983 edition. 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 of Protection”) and Article 32 (“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.

### **Privileges and Immunities**

28. Nothing in or relating to this Contract shall be deemed to be a waiver, express or implied, of any of the privileges and immunities of the United Nations or of UNU, which is an autonomous organ of the General Assembly thereof.