

MEMORANDUM OF UNDERSTANDING

FOR THE PROVISION OF PROCUREMENT SERVICES

BETWEEN

UNICEF, THE UNITED NATIONS CHILDREN'S FUND

AND

NAME OF THE CUSTOMER

YEAR

THIS MEMORANDUM OF UNDERSTANDING FOR THE PROVISION OF PROCUREMENT SERVICES (together with any attachments, this "Memorandum of Understanding") is made

BETWEEN: The Name of the CUSTOMER having its offices at Address of the CUSTOMER (hereinafter: "CUSTOMER").

AND: UNICEF, THE UNITED NATIONS CHILDREN'S FUND ("UNICEF", together with the "CUSTOMER": the "PARTIES"), an international inter-governmental organization established by the General Assembly of the United Nations by resolution No. 57(I) of 11 December 1946 as a subsidiary organ of the United Nations, having its headquarters at UNICEF House, Three United Nations Plaza, New York, New York, 10017, U.S.A.

WHEREAS

- A. UNICEF, in accordance with its Charter and Mission Statement, works with governments, civil society organizations and other organizations around the world - including Name of the CUSTOMER, to advance children's rights to survival, protection, development, and participation, and is guided by the Convention on the Rights of the Child.
- B. UNICEF's Supply Division is mandated to establish a Global Center for Children's Supplies and pursues its mandate by, among other things, providing the services of purchasing and/or stocking, set packing and dispatching supplies, equipment, and other materials in support of UNICEF's programme activities.
- C. UNICEF is permitted under UNICEF Financial Regulation 5.2 and Financial Rules 105.5 to 105.8, to enter into arrangements with Governments, other organizations in the United Nations system, and governmental and non-governmental organizations, to undertake activities on their behalf for the purchase of supplies, equipment and services where such materials and services are required for purposes related to UNICEF activities and consistent with the aims and policies of UNICEF.
- D. The CUSTOMER has asked UNICEF to undertake procurement on its behalf in accordance with UNICEF's regulations and rules and UNICEF has agreed to do so on the terms and conditions set forth herein.

NOW THEREFORE, UNICEF AND THE CUSTOMER hereby agree as follows:

DEFINITIONS

In this Memorandum of Understanding the following terms have the following meanings, unless otherwise stated:

- 1.1 Procurement Services means the activities undertaken by UNICEF on behalf of the CUSTOMER pursuant to this Memorandum of Understanding for the purchase of Supplies where such Supplies are required for purposes related to UNICEF activities and consistent with the aims and policies of UNICEF.
- 1.2 Request for Procurement Services means a request, in writing, on a standard UNICEF form, for provision of Procurement Services.
- 1.3 Supplies means supplies, equipment and services provided by UNICEF in response to an accepted Request for Procurement Services.
- 1.4 Services means supply-related or management services provided by UNICEF and executed through Procurement Services.
- 1.5 Standard Supplies means Supplies for which the specification is recommended by UNICEF and that are listed in the UNICEF Supply Catalogue and Price List at the time a Request for Procurement Services is accepted by UNICEF.
- 1.6 Non-Standard Supplies means Supplies that are not listed in the UNICEF Supply Catalogue and Price List at the time a Request for Procurement Services is accepted by UNICEF.
- 1.7 Warehouse Items means goods and equipment held in inventory in Supply Division Warehouses.
- 1.8 Non-Warehouse Items means goods and equipment that are neither Warehouse Items nor vaccines.
- 1.9 UNICEF Supply Catalogue and Price List means the catalogue of standard Supplies and equipment available through UNICEF and the sales price of each.
- 1.10 Vaccine Arrival Report (VAR) form means a form developed by UNICEF which is intended to facilitate documentation of the arrival status of the vaccines, as assessed by the CUSTOMER, and to assist UNICEF with monitoring such information on a wider basis.

PROCUREMENT SERVICES TO BE OFFERED

2. For the term of this Memorandum of Understanding, UNICEF will offer Procurement Services to the CUSTOMER (a) in respect of Standard Supplies, (b) in respect of Non-

Standard Supplies where the specifications for such Non-Standard Supplies provided to UNICEF are clear and complete and (c) in respect of Services where the Terms of Reference have been set out in writing by UNICEF.

3. The CUSTOMER undertakes to ensure that all Supplies and Services procured in accordance with this Memorandum of Understanding are for use in connection with activities and projects that promote the well being of children.

REQUESTS FOR PROCUREMENT SERVICES

4. The CUSTOMER will request Procurement Services in accordance with this Memorandum of Understanding by delivering to UNICEF a completed Request for Procurement Services.
5. Each Request for Procurement Services will include the estimated total costs of the requested Supplies based on the then-current UNICEF Supply Catalogue and Price List or estimates earlier provided by UNICEF.
6. Upon receipt of a Request for Procurement Services, UNICEF will notify the CUSTOMER of whether the Request for Procurement Services is accepted, is declined or is incomplete. UNICEF reserves the right to decline any Request for Procurement Services delivered pursuant to this Memorandum of Understanding.
7. In case of acceptance, UNICEF's notice will be accompanied by a Cost Estimate for delivery of the requested Supplies. The acceptance is conditional on the CUSTOMER's consent to the Cost Estimate. The Cost Estimate will contain positions for the cost of the Supplies, delivery (freight), insurance, any other related Services, UNICEF's handling charge and a contingency buffer. The purpose of the buffer is to cover price and currency exchange fluctuations. An unused buffer or an unused share thereof is refundable. The buffer can be waived under exceptional circumstances.

CONTRACT UPON ACCEPTANCE OF REQUEST FOR PROCUREMENT SERVICES

8. A Request for Procurement Services accepted in accordance with this Memorandum of Understanding, and the UNICEF notice of acceptance, will together constitute a contract between UNICEF and the CUSTOMER, governed by the terms and conditions of this Memorandum of Understanding.
9. Contract amendments, including amendments as to the quantity of Supplies or scope of Services, may only be made by subsequent written agreement between UNICEF and the CUSTOMER. The CUSTOMER will be responsible for any costs, including any penalties

imposed by the original manufacturer / supplier of the Supplies or service provider, resulting from an amendment entered into at the CUSTOMER'S request. Equally, UNICEF will credit the CUSTOMER with any cost savings.

PAYMENT

10. Upon receipt of UNICEF's notice accepting a Request for Procurement Services, the CUSTOMER will make advance payment of the amount as set out in the accompanying Cost Estimate.
11. The CUSTOMER will make payment by transferring that amount to the UNICEF bank account set out in UNICEF's notice accepting the Request for Procurement Services. No Request for Procurement Services will be acted upon by UNICEF until the payment due has been made.
12. The CUSTOMER will be liable for payment of (a) price increases resulting from the difference between prices given in the Cost Estimate and actual prices to be paid by UNICEF to the selected supplier(s) or service provider(s), including variations in freight costs, as well as currency exchange fluctuations or other incidental costs, and (b) any subsequent increase in UNICEF's handling fee. Similarly, the CUSTOMER will be credited in the case of cost decreases. For Warehouse Items the provisions of this clause apply in the sense that prices are set and updated in regular intervals by UNICEF.

PROCUREMENT SUBJECT TO UNICEF'S PROCEDURES

13. Supplies and Services will be procured in accordance with UNICEF's rules, regulations, and procedures for procurement and financial regulations and rules. On a case-by-case basis, UNICEF may entrust execution of a CUSTOMER's Procurement Services request to UN partner Agencies, which shall apply their respective procurement and financial rules and regulations. UNICEF will forward to the CUSTOMER copies of purchase orders placed on behalf of the CUSTOMER.

DELIVERY OF SUPPLIES

Shipment and Insurance

14. The CUSTOMER or its nominated representative will be the consignee of the Supplies. UNICEF will not serve as consignee of the Supplies. UNICEF will arrange for shipment of the Supplies to the port of entry designated by the CUSTOMER. UNICEF or UNICEF's designated freight forwarder will send copies of relevant shipping documents and required product quality assurance documents (bill of lading, Air Way Bill, Certificate of

Analysis, etc.) to the consignee. UNICEF shall inform the CUSTOMER of any potential or actual delivery delays as soon as UNICEF obtains information on such delay.

15. All Supplies will be delivered on Carriage and Insurance Paid (CIP) (INCOTERMS 2010) to the port of entry designated in the Cost Estimate, unless otherwise agreed to in writing. If UNICEF agrees to self insurance by the CUSTOMER, UNICEF will require that the CUSTOMER produces proof satisfactory to UNICEF that the shipment will be adequately covered by insurance.

Vaccines

16. UNICEF will arrange for air shipment of vaccines. UNICEF will provide the following documents/information to the consignee by email or fax at least five (5) working days before arrival of the vaccines: (i) Flight details, (ii) Air Way Bill, (iii) supplier's invoice, (iv) packing list, (v) Release Certificate(s) issued by the relevant National Regulatory Authority for the vaccine lot supplied. For the documents listed hereafter, one set will be attached to the consignment and one set will be placed inside shipping carton no. 1: the aforementioned documents (ii) – (v) and a Vaccine Arrival Report (VAR) form, unless specified otherwise in the packing list due to particular packing needs.

UNICEF requests that the VAR form be completed, signed and returned to the respective UNICEF Country Office within seventy two (72) hours of delivery of the vaccines. A completed VAR form may, however, neither be interpreted a) as an indication, express or implied, on the part of UNICEF of agreement to or acceptance of any form of liability, claims or other form of obligation related to the data entered in the form, nor b) as prima facie evidence related to the technical conformity or quality of shipped vaccines.

Inspection of Supplies Prior to Shipment

17. UNICEF may, on request, make provision for inspection of Supplies prior to shipment. The cost, if any, of such inspection will be set out in the Cost Estimate or an amendment thereto.

Customs Clearance

18. The CUSTOMER will be fully responsible for reception at the port of entry, customs clearance and distribution of all Supplies, unless otherwise provided for in this Memorandum of Understanding or in the Cost Estimate. Irrespective of agreed, exceptional arrangements for UNICEF to provide services related to customs clearance, the CUSTOMER remains liable for paying any taxes, toll or other duties.

19. UNICEF will not accept the return of any Supplies procured for the CUSTOMER; provided however that in exceptional circumstances and with the prior written agreement of UNICEF, Warehouse Items may be returned to UNICEF, Supply Division, Copenhagen, at the CUSTOMER'S expense.

DELIVERY OF SERVICES

20. Services will be deemed delivered when effected. If UNICEF provides Services and these Services require that the CUSTOMER obtains or assists with obtaining permits, licenses and other official approvals or that the CUSTOMER furnishes powers of attorney or other authorizations to UNICEF, the CUSTOMER shall cooperate in a timely and expeditious manner.

FINAL ACCOUNT

21. After shipment of all Supplies and/or delivery of Services, and recording of all expenses incurred, UNICEF will prepare a statement of account to be forwarded to the CUSTOMER, covering the total cost of the Procurement Services, and shall include any variation in cost, including penalties, if any, and credits due to decreases in price or quantities of Supplies / scope of Services.
22. The statement of account will be expressed in United States dollars. The United Nations operational rate of exchange shall apply to all currency conversions under this Memorandum of Understanding and all contracts entered into pursuant to this Memorandum of Understanding.
23. In the event that the statement of account indicates a balance in favor of the CUSTOMER, the CUSTOMER will be requested to instruct UNICEF whether that amount is to be retained for further transactions or is to be refunded. In the event that the statement of account indicates a deficit in the funds deposited with UNICEF and the buffer was not sufficient to cover this deficit, the CUSTOMER will, within thirty (30) days from notification by UNICEF, make the additional payments to the same bank account and in the same currency as the original deposit was made in order to settle the account.
24. If UNICEF does not receive a response within two (2) years after its request for instructions from the CUSTOMER on disposition of a positive balance, and after sending out a written reminder, the balance will be considered a donation to UNICEF.

WARRANTY; LIABILITY

25. UNICEF is liable for executing Procurement Services requests with reasonable diligence.

Beyond this commitment, UNICEF does not assume liability, express or implied, written or oral, with regard to delivery delay, loss or damage, value, freedom from fault or infringement of Supplies, product quality, efficiency, characteristics, suitability or usefulness, and third party Services,. For delivery of Services with own resources, UNICEF does not assume liability except where arising from gross negligence, misconduct or intent. UNICEF's total liability, in any event, shall not exceed the order value of the procurement services with respect to which a claim is made. In no event shall UNICEF be liable for incidental, indirect, consequential or immaterial losses or damages, or for lost revenues or profits. In case of dispute on the technical conformity or quality of WHO pre-qualified vaccines and WHO-approved pharmaceuticals, the PARTIES agree on final assessment by WHO.

26. To the extent legally possible, UNICEF will pass on to the CUSTOMER any warranty offered, minimum shelf life assurance (for pharmaceuticals and vaccines), and liability entered by the supplier or service provider.
27. All claims related to any defect in quality or other non- conformity of Supplies or for any loss or damage shall be handled directly by the CUSTOMER with the original manufacturer, supplier, or insurance underwriter. UNICEF will provide to the CUSTOMER any assistance that the CUSTOMER may reasonably request in handling such claims.
28. UNICEF accepts no liability for any third party claims arising out of or in connection with its performance under any contract for Procurement Services entered into in accordance with this Memorandum of Understanding. The CUSTOMER will indemnify, deal with, defend and hold UNICEF harmless in connection with any third party claim or other cause of action arising out of or related to any such contract.
29. The majority of UNICEF contracts with suppliers and manufacturers contains a clause on liquidated damages, allowing collection of lump-sum damages from the supplier / manufacturer for a delay in delivery. Wherever possible to execute and claim liquidated damages, the received amount will be payed out to the CUSTOMER. Where there is no liquidated damages provision in long-term arrangements with suppliers / manufacturers, UNICEF will undertake best efforts to include such a provision in relevant Purchase Orders to be placed on behalf of the CUSTOMER. Where long-term arrangements with suppliers are not available and commodities must be procured through public bid, UNICEF will include a liquidated damages clause in bidding documents, unless this is not advisable for the commodity concerned, in which case UNICEF shall coordinate with the

CUSTOMER accordingly before placing the bid.

SETTLEMENT OF DISPUTES

30. The PARTIES shall use their best efforts to settle amicably any dispute, controversy, or claim arising out of or relating to this Memorandum of Understanding. Where the PARTIES wish to seek such an amicable settlement through conciliation, the conciliation shall take place in accordance with the UNCITRAL Conciliation Rules then in force, or according to such other procedure as may be agreed between the PARTIES. Any such dispute, controversy, or claim which is not settled amicably within sixty (60) days after receipt by one Party of the other Party's request for such amicable settlement, shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration rules then in force. The PARTIES shall be bound by an arbitration award rendered as a result of such arbitration as the final adjudication of such dispute. The costs of the procedure shall be shared equally by the PARTIES. The arbitral tribunal shall have no authority to award punitive damages. The Tribunal shall have no authority to award interest in excess of four percent (4%) and such interest shall be simple interest only. As used herein, the term, "UNCITRAL" means the United Nations Commission on International Trade Law."

NO WAIVER OF PRIVILEGES AND IMMUNITIES

31. Nothing contained in or relating to this Memorandum of Understanding, including but not limited to any contract entered into in accordance with the terms of this Memorandum of Understanding, shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations and its subsidiary organs, including UNICEF, whether under the Convention on the Privileges and Immunities of the United Nations, or otherwise, and no provision of this Memorandum of Understanding or any contract entered into in accordance with the terms of this Memorandum of Understanding shall be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

TERM AND TERMINATION

32. This Memorandum of Understanding will enter into force on the day of the last signature affixed by the PARTIES and shall remain in force until terminated by either Party.
33. Either Party may terminate this Memorandum of Understanding without cause upon ninety (90) days' written notice to the other and may terminate this Memorandum of Understanding for cause upon fourteen (14) days' written notice to the other.

34. Upon termination of this Memorandum of Understanding, the PARTIES will take all reasonable and necessary measures to conclude any Procurement Services already commenced in accordance with this Memorandum of Understanding.
35. The provisions of this Memorandum of Understanding will survive any termination, to the extent necessary to permit an orderly settlement of accounts between the PARTIES.

GENERAL PROVISIONS

36. Any notice, request or consent required or permitted to be given or made pursuant to this Memorandum of Understanding will be in writing, and addressed and sent by registered mail or confirmed facsimile transmission as follows:

If to UNICEF:

UNICEF Country Office

Att: The Representative

With a copy to:

UNICEF, the United Nations Children's Fund
PROCUREMENT SERVICES
UNICEF Supply Division
Oceanvej 10-12
2150 Nordhavn
Copenhagen - DENMARK
Attn: Director

Tel: +45 45 33 55 56

Fax: +45 35 26 94 21

If to the CUSTOMER:

Address of the CUSTOMER

37. Notices will be deemed to be effective as follows: in the case of registered mail, seven (7) days after posting; in the case of facsimiles, twenty four (24) hours following confirmed transmission.
38. The CUSTOMER confirms that no official of UNICEF has received or will be offered by the CUSTOMER any direct or indirect benefit arising from this Memorandum of Understanding. UNICEF confirms the same to the CUSTOMER. The PARTIES agree that any breach of this provision is a breach of an essential term of this Memorandum of

Understanding.

39. Nothing contained in this Memorandum of Understanding shall be construed as establishing a relation of employer and employee or of principal and agent between the PARTIES.
40. The CUSTOMER shall not assign or make other disposition of this Memorandum of Understanding or any part thereof, or any of the CUSTOMER's rights, claims or obligations under this Memorandum of Understanding, except with prior written consent of UNICEF.
41. A party prevented by *force majeure* from fulfilling its obligations shall not be deemed in breach of such obligations. The said party shall use all reasonable efforts to mitigate consequences of *force majeure*. At the same time, the Parties shall consult with each other on modalities of further execution of the Memorandum of Understanding. *Force majeure* as used in this Memorandum of Understanding is defined as acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
42. The Parties shall keep confidential any documents, data or other information furnished to each other. The Parties may, however, disclose such information to their subcontractors or partners, as may reasonably be required to execute the Procurement Services, and provided that the subcontractors or partners shall be bound by similar confidentiality requirements. UNICEF may also report on executed transactions in the scope of its periodic reports and publications.
43. The CUSTOMER shall not advertise or otherwise make public that UNICEF is furnishing Supplies or Services to the CUSTOMER, or use the name, emblem or official seal of UNICEF for any purpose, unless authorised in writing by UNICEF.
44. The following previous agreements on provision of Procurement Services by UNICEF are hereby terminated: *none*
45. This Memorandum of Understanding may be altered, modified or amended only by written instrument duly executed by all PARTIES.

IN WITNESS THEREOF, the PARTIES hereto have executed this Memorandum of

Understanding.

THE CUSTOMER

By: _____

NAME OF CUSTOMER REPRESENTATIVE
TITLE
DATE

Authorized Representative

UNICEF, the United Nations Children’s Fund

By: _____

NAME OF UNICEF REPRESENTATIVE
TITLE
DATE

Authorized Representative