

## ANNEX IV UNICEF TERMS & CONDITIONS

The provisions contained in this Annex IV shall constitute the UNICEF Terms & Conditions as indicated herein and shall apply to all procurements in accordance with, and without prejudice to this MOU.

### DEFINITIONS

1. The following terms have the following meanings, unless otherwise stated:
  - 1.1 Acceptance means the acceptance by the Eligible Buyer of the UNICEF Offer made through AMSP in writing in the form set out in Annex VI of the Chapeau MOU.
  - 1.2 Agreed Products means COVID-19 vaccines secured through agreements between AVAT and the COVID-19 vaccine manufacturers and any other immunization-related supplies which include but are not limited to syringes and other safe injection equipment, cold chain equipment, personal protective equipment and other goods (the “Ancillary Products”) as may be agreed in writing between UNICEF and AVAT from time to time.
  - 1.3 AMSP means the African Medical Supplies Platform.
  - 1.4 Chapeau MOU means the memorandum of understanding entered into between AVAT and UNICEF governing, amongst other things, the interaction of AVAT and UNICEF in connection with the provision of Procurement Services.
  - 1.5 Cost Estimate means the form which includes the particular details of the procurement services shall be included in each cost estimate quotation issued by UNICEF to be accepted by the Eligible Buyer, as applicable.
  - 1.6 Eligible Buyer means AU Member States registered on AMSP that: (a) have agreed to participate in the Advance Procurement Commitment (“APC”) Facility of the COVID-19 African Vaccine Acquisition Task Team (“AVATT”) and notified in writing by AVAT to UNICEF from time to time as being an eligible buyer; and (b) are financed by either their own domestic resources or financed in whole or in part by other third-party financing institutions (which for the avoidance of doubt may include Afreximbank) (each an “Eligible Buyer” and together, the “Eligible Buyers”).
  - 1.7 Procurement Services means the activities undertaken by UNICEF on behalf of the Eligible Buyer for the purchase of Agreed Products where such Supplies are required for purposes related to UNICEF activities and consistent with the aims and policies of UNICEF.

- 1.8 Requisition means a requisition prepared by AVAT working with AMSP for the procurement of the applicable Agreed Products and any requested procurement services on behalf of the Eligible Buyers.
- 1.9 Supplies means Agreed Products and related supplies, equipment and services provided by UNICEF in response to a Request for Procurement Services.
- 1.10 Services means supply-related or management services provided by UNICEF and executed through Procurement Services.
- 1.11 UNICEF Offer means the Cost Estimate and the UNICEF Terms and Conditions, which shall constitute the formal offer made by UNICEF to the Eligible Buyer for the procurement of the applicable Agreed Products;
- 1.12 Procurement Services Agreement has the meaning given in paragraph 6.
- 1.13 Warehouse Items means goods and equipment held in inventory in UNICEF Supply Division Warehouses.

#### **PROCUREMENT SERVICES TO BE OFFERED**

2. UNICEF will offer Procurement Services to the Eligible Buyer in respect of Agreed Products subject to the Terms and Conditions set out herein.
3. The Eligible Buyer undertakes to ensure that all Agreed Products procured in accordance with the Procurement Services Agreement are for use in connection with activities and projects that promote the health or well-being of children or populations.

#### **REQUESTS FOR PROCUREMENT SERVICES**

4. On the basis of the pre-order form and/or commitment letter submitted by the Eligible Buyer through AMSP, and confirmation by the Eligible Buyer to AVAT of the source of its funding, AVAT shall, pursuant to the terms of the Chapeau MOU, submit a Requisition to UNICEF on behalf of an Eligible Buyer who requires Procurement Services from UNICEF. By providing this information to AVAT and permitting AVAT to submit a Requisition on its behalf, the Eligible Buyer warrants to UNICEF that it is eligible to procure the Agreed Products indicated in the Requisition. If UNICEF accepts the Requisition in accordance with the terms of the Chapeau MOU, a UNICEF Offer will be made to the Eligible Buyer.
5. The contingency buffer included in the UNICEF Offer will be 6% of the base price of the Agreed Products and will cover price and currency exchange rate fluctuations in respect of UNICEF's provision of the Procurement Services. An unused buffer or an

unused share thereof will be refunded to the Eligible Buyer via AVAT pursuant to the Chapeau MOU.

6. Following confirmation from AVAT of the source of payment in respect of each Eligible Buyer, and once UNICEF has subsequently issued a UNICEF Offer to the Eligible Buyer with the authenticated source, in the event that an Eligible Buyer accepts a UNICEF Offer, the Eligible Buyer will transmit a formal written Acceptance to UNICEF via AMSP, which will constitute a legally binding agreement between UNICEF and the Eligible Buyer (the “**Procurement Services Agreement**”).

#### **PAYMENT**

7. Upon receipt of the Acceptance, UNICEF will invoice via a payment request through AVAT the Eligible Buyer and the Eligible Buyer shall pay the relevant amount set out in the invoice to AVAT under and in accordance with the Participation Agreement. AVAT shall then pay UNICEF the relevant amounts under the invoice that are to be paid to UNICEF in accordance with the Chapeau MOU (the “**UNICEF Costs**”).
8. The Eligible Buyer is solely responsible for the fulfilment of any contractual obligations or any other liabilities under the Procurement Services Agreement. Except for the responsibility to pay each of the invoices as indicated above, AVAT shall not be responsible for the fulfilment of any contractual obligations or any other liabilities under the Procurement Services Agreement.
9. It is acknowledged that, where informed via a Requisition, the amounts set out in an invoice issued by UNICEF to an Eligible Buyer may be paid by the World Bank on behalf of an Eligible Buyer by direct disbursement to UNICEF (rather than through AVAT) in satisfaction of that invoice.
10. Confirmation of transfer and, if relevant, confirmation of receipt of any advanced payment will be recorded and notified by UNICEF to the Eligible Buyer accordingly.
11. No Acceptance will be acted upon by UNICEF until the payment due has been made.
12. The Eligible Buyer will be liable for payment of (a) price increases resulting from the difference between prices given in the UNICEF Offer 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 Eligible Buyer will be credited (through AVAT) 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 the Procurement Services Agreement to United Nations partner agencies, which shall apply their respective procurement and financial rules and regulations.

#### **DELIVERY OF SUPPLIES**

##### **Shipment and Insurance**

14. The Eligible Buyer 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 Eligible Buyer and as agreed in the Procurement Services Agreement. 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 Eligible Buyer of any potential or actual delivery delay as soon as UNICEF obtains information on such delay.
15. All Supplies will be delivered on Carriage and Insurance Paid (CIP) (INCOTERMS 2020) to the port of entry designated in the Procurement Services Agreement, unless otherwise agreed to between UNICEF and the Eligible Buyer in the Procurement Services Agreement. If UNICEF agrees to self-insurance by the Eligible Buyer, UNICEF will require that the Eligible Buyer produces proof satisfactory to UNICEF that the shipment will be adequately covered by insurance.

##### **Inspection of Supplies Prior to Shipment**

16. 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 Procurement Services Agreement or an amendment thereto.

##### **Customs Clearance**

17. The Eligible Buyer will be fully responsible for reception at the port of entry, customs clearance and distribution of all Supplies, unless otherwise provided for in

the Procurement Services Agreement. Irrespective of agreed, exceptional arrangements for UNICEF to provide services related to customs clearance, the Eligible Buyer remains liable for paying any taxes, toll or other duties.

18. UNICEF will not accept the return of Supplies procured for the Eligible Buyer.

#### **DELIVERY OF SERVICES**

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

#### **FINAL ACCOUNT**

20. After shipment of all Supplies and/or delivery of Services, and recording of all expenses incurred, UNICEF will prepare a statement of account 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. The statement of account will be transmitted to the Eligible Buyer through the AMSP, with a copy delivered to AVAT and Afreximbank.
21. The statement of account will be expressed in United States Dollars. The United Nations operational rate of exchange (<https://treasury.un.org/operationalrates/OperationalRates.php>) shall apply to all currency conversions.
22. In the event that the statement of account indicates a surplus in the funds deposited with UNICEF then UNICEF will promptly notify the Eligible Buyer of this fact and will reimburse the surplus balance in the same currency as the original deposit was made through AVAT in accordance with the Chapeau MOU.
23. 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, then the relevant Eligible Buyer will within thirty (30) days from notification by UNICEF make additional payments. The notification will request the Eligible Buyer to pay the outstanding balance to UNICEF through AVAT in accordance with the Chapeau MOU. If UNICEF becomes aware that other Procurement Services Agreements may generate a deficit, then UNICEF will notify AVAT and the Eligible Buyer accordingly, and retain those surplus balances to offset any anticipated deficit.

#### **WARRANTY; LIABILITY**

24. 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 the delivery of Services with its 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.
25. 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 Eligible Buyer with the original manufacturer, supplier, or insurance underwriter. UNICEF will provide to the Eligible Buyer any assistance that the Eligible Buyer may reasonably request to assert such claims.
26. To the extent applicable, UNICEF will pass on to the Eligible Buyer the benefit of any warranties, minimum shelf life assurances and liability provisions contained in UNICEF's agreements with the relevant manufacturer(s), supplier(s) or service provider(s) in respect of the Supplies or Services, and shall ensure that all agreements between UNICEF and manufacturer(s), supplier(s), seller(s), shipper(s) or insurer(s) include appropriate provisions for product liability claims, to the extent possible and in relation to COVID-19 vaccines, in accordance with any terms as may have been agreed between AVAT and the Suppliers.
27. UNICEF accepts no liability for any third-party claims arising out of or in connection with its performance under a Procurement Services Agreement. The Eligible Buyer 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 the Procurement Services Agreement.
28. In the event that a supplier or manufacturer is delayed in its delivery of the Agreed Products, UNICEF will claim any relevant liquidated damages in respect of its agreement with the supplier or manufacturer, to the extent applicable, and the received amount will be paid by UNICEF to the Eligible Buyer through AVAT.

**TERM, TERMINATION, AMENDMENT**

29. The Procurement Services Agreement shall be effective from date the Acceptance is generated and received by UNICEF through AMSP and shall remain valid until the

obligations of both parties have been completed or unless terminated by either party for cause upon seven (7) calendar days' notice to the other party.

30. An Eligible Buyer who elects to terminate a Procurement Services Agreement without cause after UNICEF has placed an order with a manufacturer or supplier of the Agreed Products will be responsible for any costs, including any penalties imposed by the original manufacturer / supplier of the Supplies, resulting from the termination. UNICEF will refund to the Eligible Buyer through AVAT the sums prepaid after offsetting the amount with the costs referred to above.
31. An amendment to the Procurement Services Agreement will require written approval through AMSP by the Eligible Buyer and UNICEF. UNICEF shall promptly inform AVAT in writing of any such amendment to the relevant Procurement Services Agreement. The Eligible Buyer 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 Eligible Buyer's request. UNICEF will credit the Eligible Buyer through AVAT with any cost savings.
32. In the event of termination of a Procurement Services Agreement, the Parties shall take the necessary steps to ensure that the activities carried out under the Procurement Services Agreement are brought to a prompt and orderly conclusion. Notwithstanding the foregoing, pending fulfillments of orders under a Procurement Services Agreement between UNICEF and an Eligible Buyer shall be fulfilled by UNICEF, and paid for by the Eligible Buyer in accordance with the terms of the Procurement Services Agreement.
33. The provisions of a Procurement Services Agreement shall survive any termination, to the extent necessary to permit an orderly settlement of accounts between UNICEF and the Eligible Buyer.

#### **SETTLEMENT OF DISPUTES**

34. UNICEF and the Eligible Buyer shall use their best efforts to settle amicably any dispute, controversy, or claim arising out of or relating a Procurement Services Agreement. Where UNICEF and the Eligible Buyer 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 UNICEF and the Eligible Buyer. 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. UNICEF and the Eligible Buyer 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 UNICEF and the Eligible Buyer. 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**

35. Nothing contained in or relating to a Procurement Services Agreement, 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 a Procurement Services Agreement shall be interpreted or applied in a manner, or to an extent, inconsistent with such privileges and immunities.

#### **GENERAL PROVISIONS**

36. Any notice, request or consent required or permitted to be given or made pursuant to the Procurement Services Agreement will be in writing, and addressed and sent by registered mail or confirmed facsimile transmission as follows:

If to UNICEF:

UNICEF, the United Nations Children's Fund  
PROCUREMENT SERVICES  
UNICEF Supply Division  
Oceanvej 10-12  
2150 Nordhavn  
Copenhagen - DENMARK  
Attn: Director  
Email: [psid@unicef.org](mailto:psid@unicef.org)

Tel: +45 45 33 55 56  
Fax: +45 35 26 94 21

If to the Eligible Buyer:



As indicated in the Acceptance and with a copy to AVAT.

37. Notices will be deemed to be effective as follows: in the case of registered mail, seven (07) days after posting; in the case of facsimiles, twenty-four (24) hours following confirmed transmission.
38. The Eligible Buyer confirms that no official of UNICEF has received or will be offered by the Eligible Buyer any direct or indirect benefit arising from the Procurement Services Agreement. UNICEF confirms the same to the Eligible Buyer. UNICEF and the Eligible Buyer agree that any breach of this provision is a breach of an essential term of the Procurement Services Agreement.
39. Nothing contained in the Procurement Services Agreement shall be construed as establishing a relation of employer and employee or of principal and agent between UNICEF and the Eligible Buyer.
40. The Eligible Buyer shall not assign or make other disposition of the Procurement Services Agreement or any part thereof, or any of the Eligible Buyer's rights, claims or obligations under the Procurement Services Agreement, 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, UNICEF and the Eligible Buyer shall consult with each other on modalities of further execution of the Procurement Services Agreement. *Force majeure* is defined as acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force.
42. UNICEF and the Eligible Buyer shall keep confidential any documents, data or other information furnished to each other. UNICEF and the Eligible Buyer 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 and make disclosures to the AVAT and other entities affiliated with the APC Facility, where applicable.
43. UNICEF and the Eligible Buyer shall coordinate public relations measures, if any, in regard to their cooperation and also any cooperation involving AVAT and other entities affiliated with the APC Facility.