

## ***Annex II - General Conditions of Contract***

### **1. LEGAL STATUS**

The Contractor shall be considered as having the legal status of an independent contractor vis-à-vis *the Climate Change Department*. The Contractor's personnel and sub-contractors shall not be considered in any respect as being the employees or agents of *the Climate Change Department*.

### **2. SOURCE OF INSTRUCTIONS**

The Contractor shall neither seek nor accept instructions from any authority external to *the Climate Change Department* in connection with the performance of its services under this Contract.

### **3. CONTRACTOR'S RESPONSIBILITY FOR EMPLOYEES**

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

### **4. ASSIGNMENT**

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of *the Climate Change Department*.

### **5. SUB-CONTRACTING**

In the event the Contractor requires the services of sub-contractors, the Contractor shall obtain the prior written approval and clearance of *the Climate Change Department* for all sub-contractors. The approval of a sub-contractor shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform with the provisions of this Contract.

### **6. OFFICIALS NOT TO BENEFIT**

The Contractor warrants that no official of *the Climate Change Department* or the Project has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract.

### **7. INDEMNIFICATION**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, *the Climate Change Department*, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and

expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, inter alia, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. The obligations under this Article do not lapse upon termination of this Contract.

## 8. INSURANCE AND LIABILITIES TO THIRD PARTIES

- 8.1 The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.
- 8.2 The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.
- 8.3 The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract.
- 8.4 Except for the workmen's compensation insurance, the insurance policies under this Article shall:
  - (i) Name *the Climate Change Department* as additional insured;
  - (ii) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against *the Climate Change Department* or the Project;
  - (iii) Provide that *the Climate Change Department* shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.
- 8.5 The Contractor shall, upon request, provide the *the Climate Change Department* with satisfactory evidence of the insurance required under this Article.

## 9. ENCUMBRANCES/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 *Climate Change Department* or the Project against any monies due or to become due for any work done or materials furnished under this Contract, or by reason of any other claim or demand against the Contractor.

## **10. TITLE TO EQUIPMENT**

Title to any equipment and supplies that may be furnished by the Project shall rest with *the Climate Change Department* and any such equipment shall be returned to the Project at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to the Project, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate *the Climate Change Department* for equipment determined to be damaged or degraded beyond normal wear and tear.

## **11. COPYRIGHT, PATENTS AND OTHER PROPRIETARY RIGHTS**

*The Climate Change Department* shall be entitled to all intellectual property and other proprietary rights including but not limited to patents, copyrights, and trademarks, with regard to products, or documents and other materials which bear a direct relation to or are produced or prepared or collected in consequence of or in the course of the execution of this Contract. At the *the Climate Change Department's* request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring them to *the Climate Change Department* in compliance with the requirements of the applicable law.

## **12. USE OF NAME, EMBLEM OR OFFICIAL SEAL OF THE ROYAL GOVERNMENT OF CAMBODIA**

The Contractor shall not advertise or otherwise make public the fact that it is a Contractor with *the Climate Change Department*, nor shall the Contractor, in any manner whatsoever use the name, emblem or official seal of the Royal Government of Cambodia nor of *the Climate Change Department* in connection with its business or otherwise.

## **13. CONFIDENTIAL NATURE OF DOCUMENTS AND INFORMATION**

13.1 All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of *the Climate Change Department*, shall be treated as confidential and shall be delivered only to authorized officials of the Project on completion of work under this Contract.

13.2 The Contractor may not communicate at any time to any other person, Government or authority external to *the Climate Change Department*, any information known to it by reason of its association with the *the Climate Change Department* or the Project which has not been made public except with the authorization of the *the Climate Change Department*); nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

## **14. FORCE MAJEURE; OTHER CHANGES IN CONDITIONS**

- 14.1 Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.
- 14.2 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 *Climate Change Department*, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify the *Climate Change Department* of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, the *Climate Change Department* shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.
- 14.3 If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, the *Climate Change Department* shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in Article 15, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

## 15. TERMINATION

- 15.1 Either party may terminate this Contract for cause, in whole or in part, upon thirty days notice, in writing, to the other party. The initiation of arbitral proceedings in accordance with Article 16 "Settlement of Disputes" below shall not be deemed a termination of this Contract.
- 15.2 The *Climate Change Department* reserves the right to terminate without cause this Contract at any time upon 15 days prior written notice to the Contractor, in which case the *Climate Change Department* shall reimburse the Contractor for all reasonable costs incurred by the Contractor prior to receipt of the notice of termination.
- 15.3 In the event of any termination by *the Climate Change Department* under this Article, no payment shall be due from *the Climate Change Department* to the Contractor except for work and services satisfactorily performed in conformity with the express terms of this Contract. The Contractor shall take immediate steps to terminate the work and services in a prompt and orderly manner and to minimize losses and further expenditures.

**15.4** Should the Contractor be adjudged bankrupt, or be liquidated or become insolvent, or should the Contractor make an assignment for the benefit of its creditors, or should a Receiver be appointed on account of the insolvency of the Contractor, *the Climate Change Department* may, without prejudice to any other right or remedy it may have, terminate this Contract forthwith. The Contractor shall immediately inform *the Climate Change Department* of the occurrence of any of the above events.

## **16. SETTLEMENT OF DISPUTES**

This contract is subject to the laws of the Kingdom of Cambodia.

## **17. TAX EXEMPTION**

Contractor is solely responsible for any taxes levied on the monies received under this agreement

## **CHILD LABOUR**

- 1.1 The Contractor represents and warrants that neither it, nor any of its suppliers 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.
- 1.2 Any breach of this representation and warranty shall entitle the *Climate Change Department* to terminate this Contract immediately upon notice to the Contractor, at no cost to *the Climate Change Department*.

## **2. MINES**

- 2.1 The Contractor represents and warrants that neither it nor any of its suppliers is actively and directly engaged in patent activities, development, assembly, production, trade or manufacture of mines or in such activities in respect of components primarily utilized in the manufacture of Mines. The term "Mines" means those devices defined in Article 2, Paragraphs 1, 4 and 5 of Protocol II annexed to the Convention on Prohibitions and Restrictions on the Use of Certain Conventional Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects of 1980.
- 2.2 Any breach of this representation and warranty shall entitle the *Climate Change Department* to terminate this Contract immediately upon notice to the Contractor, without any liability for termination charges or any other liability of any kind against the *Climate Change Department*.

## **3. OBSERVANCE OF THE LAW**

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

**4. AUTHORITY TO MODIFY**

No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with the Contractor shall be valid and enforceable against the *Climate Change Department* unless provided by an amendment to this Contract signed by the authorized official of the *Climate Change Department*