



UNFPA GENERAL TERMS AND CONDITIONS OF PROGRAMME SUPPLIES DISTRIBUTION AGREEMENTS

1. Responsibilities of Recipient

1.1 Recipient agrees to:

1.1.1 Receive, hold, administer, manage, handle, store, transport and distribute (“use”) the Programme Supplies in accordance with the terms of and solely for the purposes authorized in the Programme Supplies Distribution Agreement (“PSDA”) or as otherwise authorized by UNFPA in writing. “Programme Supplies” or “Supplies” means the supplies included in the PSDA, which may include reproductive health (“RH”) supplies (such as pharmaceuticals, hormonal contraceptives, and male and female condoms), medical devices, other medical equipment and supplies, emergency health and medical kits (which may include RH supplies as part of the kits), dignity and hygiene kits, other well-being items, supplies for humanitarian response activities, and census materials;

1.1.2 Maintain and apply adequate internal controls necessary to ensure effective and efficient use of the Supplies, and maintain and enforce an adequate anti-fraud and anti-corruption framework;

1.1.3 Undertake best efforts to address any findings and implement any recommendations or instructions from UNFPA resulting from assessments, spot checks and audits of Recipient carried out in accordance with these General Terms and Conditions.

1.2 UNFPA and Recipient have agreed to cooperate in the distribution of Supplies for humanitarian or similar purposes. Recipient understands and agrees that it shall not be entitled to the payment or reimbursement from UNFPA of any costs, expenses or fees in connection with this PSDA or the activities performed hereunder.

2. Transfer and Use of Programme Supplies

2.1 Recipient shall distribute the Supplies in a timely fashion.

2.2 Recipient will be deemed to become the owner of the Supplies as of the moment when Recipient receives them.

2.3 Recipient shall designate an agent authorized to receive the Supplies and sign the PSDA.

2.4 For clarity, this PSDA relates to the implementation of UNFPA programme activities and is not a contract of sale. The foregoing notwithstanding, Recipient understands and agrees that the Supplies are provided “as is” and UNFPA disclaims any and all warranties, express or implied.

2.5 If national regulations require mandatory, in-country post-shipment or confirmatory testing (“Post-shipment Testing”) for the Supplies and such Post-shipment Testing was not carried out by UNFPA, the Recipient may conduct the Post-shipment Testing or cause it to be conducted. If national regulations do not require mandatory Post-shipment Testing, it is agreed that no such Post-shipment Testing shall be conducted. It is understood that the foregoing is without prejudice to Post-shipment Testing being ordered by a national regulatory authority where the authority has a well-founded concern that the Supplies have deteriorated. The laboratory conducting such testing should be ISO 17025-accredited or World Health Organization (“WHO”) pre-qualified for testing of the Supplies in question.

2.6 In cases in which Post-shipment Testing is being conducted, Recipient agrees to consult closely with UNFPA during and with regard to all aspects thereof. Recipient agrees to provide to UNFPA a full copy of any Post-shipment Testing laboratory report.

2.7 Recipient shall ensure that the Supplies will be stored, including during their transportation by the Recipient or its agents in the country, in accordance with all manufacturer’s or supplier’s instructions, and in a manner suitable to maintain the quality and efficacy of the Supplies as applicable.

2.8 Recipient shall place UNFPA markings on the Supplies as provided in the PSDA or as otherwise requested by UNFPA in writing.

2.9 Recipient shall ensure effective warehouse management, warehouse security, and inventory tracking and control, for all Supplies.

2.10 The Supplies may not be sold for profit or otherwise. In particular, the Supplies may not be diverted from the implementation of activities agreed with UNFPA, such as offered for sale or re-sale by Recipient or third parties in the stream of commerce. Any sale by Recipient or its agents or subcontractors of the Supplies for purposes of *social marketing* will require prior written authorization by UNFPA.

2.11 Following the receipt of the Supplies, Recipient shall be responsible to cover and pay for all costs associated with the subsequent in-country transportation, regardless of mode of transport, and related logistics, unless otherwise agreed between Recipient and UNFPA in writing.

2.12 Recipient shall ensure that the Supplies will be distributed together with all relevant information, including shelf life information and applicable patient, consumer or user instructions.

2.13 Any primary and secondary packaging of Supplies shall not be subject to any modification or alteration. In particular, Recipient shall not re-name, re-brand, apply marks on, or otherwise change the appearance of, the packaging without the prior written approval of UNFPA. Such approval shall be requested in writing by the Recipient from the Chief, Procurement Services Branch, UNFPA, who may be contacted at Marmorvej 51, 2100 Copenhagen, Denmark; or at procurement@unfpa.org.

2.14 Where, exceptionally, disposal of Supplies has been ordered by a governmental authority, including a national regulatory authority, Recipient shall immediately consult with UNFPA to determine a mutually acceptable procedure.

3. Record Keeping

3.1 Recipient shall maintain books and records that are accurate, complete and up-to-date. Recipient will retain all records relating to receipt, storage, distribution, loss, theft, destruction and/or expiry of Supplies, including quantities and values of the Supplies concerned. Recipient understands that its written statement that Supplies were distributed is insufficient and cannot replace the original documentation to support the distributions.

3.2 All records referred to in this section shall be kept and retained by Recipient for a period of seven years following receipt of Supplies from UNFPA.

4. Reporting

4.1 Recipient will submit periodic reports on the status and distribution of the Supplies using the [Programme Supplies Report Form](#) at times and subject to such other requirements as decided by UNFPA.

4.2 The Programme Supplies Reports shall include, for each product category of Supplies, the quantities and values of Recipient's beginning and ending balances, receipts, and distributions and adjustments, and the locations where the Supplies are maintained or stored, as reflected in Recipient's inventory control system. Programme Supplies Reports shall further disclose any quantities and values of Supplies that have been lost, stolen, destroyed, expired, or otherwise rendered unusable or useless.

5. Prohibition of Proscribed Practices

5.1 Recipient shall not engage in any corrupt, fraudulent, collusive, coercive, obstructive or unethical practices ("Proscribed Practices") and shall bring allegations of such practices arising in relation to this PSDA, of which Recipient has been informed or has otherwise become aware, promptly to the attention of the Director, Office of Audit and Investigation Services, UNFPA. The definitions of Proscribed Practices in the UNFPA Oversight Policy (available at <https://www.unfpa.org/admin-resource/unfpa-oversight-policy> or such other URL as UNFPA may from time to time decide) approved and from time to time revised by the UNFPA Executive Board shall apply.

5.2 Recipient acknowledges that any Proscribed Practice may lead to the imposition by UNFPA of sanctions (including censure or ineligibility/debarment) with regard to future transactions with UNFPA, at UNFPA's sole discretion and without prejudice to any other right or remedy available to UNFPA.

5.3 Recipient shall review and take note of the UNFPA Policy against Fraudulent and Other Proscribed Practices, available at <https://www.unfpa.org/admin-resource/unfpa-policy-against-fraudulent-and-other-proscribed-practices> (or such other URL as UNFPA may from time to time decide).

6. Protection from Sexual Exploitation and Abuse

Recipient shall take all appropriate measures to prevent sexual exploitation or abuse of anyone by its employees or any other persons engaged and controlled by Recipient to perform any services hereunder. For these purposes, sexual activity with any person less than eighteen years of age, regardless of any laws relating to consent, shall constitute the sexual exploitation and abuse of such person. In addition, Recipient shall refrain from, and shall take all reasonable

and appropriate measures to prohibit its employees or other persons engaged and controlled by it from exchanging any money, goods, services, or other things of value, for sexual favors or activities, or from engaging any sexual activities that are exploitive or degrading to any person.

7. Child Labor

Recipient represents and warrants that neither it, its parent entities (if any), nor any of Recipient'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.

8. Assurance Activities

8.1 Audit

8.1.1 At the request of and at such times as determined solely by UNFPA, Recipient may have its activities under or related to this PSDA audited. Audits will be performed subject to such standards, scope, frequency and timing as decided by UNFPA (and may cover, *inter alia*, all activities and internal controls relating to receipt, storage, distribution, adjusting, loss, theft, destruction and/or expiry of Supplies). Upon request by UNFPA, Recipient shall furnish to UNFPA, prior to the start of the audit, a letter of representation in the form available at <https://docs.google.com/a/unfpa.org/file/d/0BzrC9ALCReCvRXc5Ukd5cDFUS1U/edit> (or at such other URL as UNFPA may from time to time decide).

8.1.2 The Recipient will be provided with a copy of the final audit report without delay.

8.1.3 Recipient consents to the disclosure by UNFPA of the audit report to any third party that provided financing for the procurement of the Supplies, upon that third party's written request to UNFPA for such disclosure.

8.2 Spot checks. Recipient agrees that, from time to time, UNFPA may conduct on site reviews ("spot checks"), subject to such standards, scope, frequency and timing as determined solely by UNFPA. It is understood that UNFPA may, at its sole discretion, contract for the services of an individual or corporate person to conduct spot checks, or UNFPA may conduct spot checks with its own staff, employees and agents.

8.3 Investigation. Recipient agrees that UNFPA may conduct investigations, at such times as determined solely by UNFPA, relating to any aspect of this PSDA or the award thereof.

8.4 Audits, spot checks and investigations will be conducted by UNFPA or by persons designated by UNFPA in its sole discretion. Recipient shall provide its full and timely cooperation with any audits, spot checks or investigations. Such cooperation shall include, but shall not be limited to, Recipient's obligation to make available its personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions and to grant the auditors, spot checkers or investigators access to the Recipient's premises at reasonable times and on reasonable conditions in connection with such access to Recipient's personnel and relevant documentation and records. Recipient shall require its agents, including, but not limited to, Recipient's attorneys, accountants or other advisers, and its subcontractors to reasonably cooperate with any audits, spot checks and investigations carried out hereunder.

9. Right to Demand Return of Supplies/ Reassign Supplies

UNFPA retains the right, in its sole discretion, to demand the return of any undistributed Supplies or to direct that such Supplies be reassigned towards the implementation of other programme activities, which may be carried out by Recipient or by another party. UNFPA will issue written instructions to Recipient, upon the receipt of which Recipient shall terminate all activities for distribution of the relevant Supplies, and transfer ownership of the relevant Supplies to UNFPA or the party designated by UNFPA.

10. Refunds

UNFPA shall be entitled to a refund from Recipient for the value of any Supplies used by Recipient other than strictly in accordance with the terms and conditions of this PSDA, including in respect of: Supplies shown by audits, spot checks or investigations having been used in a manner not in accordance with this PSDA; Supplies that have been lost, stolen, destroyed, wasted or otherwise rendered useless or unusable after handover to Recipient; Supplies lost, stolen or rendered useless as a result of or in connection with Recipient or any of its employees, personnel, agents or subcontractors having engaged in a Proscribe Practice; Supplies, which have not been distributed or not otherwise used as agreed by UNFPA in writing; and for Supplies not included or properly reflected in any Supplies Report or supported by appropriate documentation and records.

11. Legal Status; Responsibility for Employees

Recipient shall be considered as having the legal status of an independent contractor vis-à-vis UNFPA. Recipient's personnel and subcontractors shall not be considered in any respect as being the personnel or subcontractors of UNFPA. Recipient shall be solely responsible for the professional and technical competence of its personnel and subcontractors and shall select reliable persons who will respect human rights and local customs, conform to a high standard of moral and ethical conduct, and apply the highest standard of care.

12. Sub-contracting

Recipient may use the services of subcontractors to perform any obligations hereunder. Recipient shall immediately inform UNFPA in writing of the selection of any subcontractor. UNFPA shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any subcontractor. Recipient shall be solely responsible for all services and obligations performed by its subcontractors. The use of subcontractors shall not relieve Recipient of any of its obligations hereunder. The terms of any subcontract shall conform and give full effect to the provisions of this PSDA, including in particular clause 5, "Prohibition of Proscribed Practices", clause 6, "Protection from Sexual Exploitation and Sexual Abuse", and clause 8, "Assurance Activities".

13. Indemnification

Recipient shall indemnify, hold and save harmless, and defend, at its own expense, UNFPA, 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 Recipient, or Recipient's employees, officers, agents or subcontractors, in the performance of this PSDA. 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 Recipient, its employees, officers, agents, servants or sub-contractors. The obligations under this clause do not lapse upon termination of this PSDA.

14. Termination

Either party may terminate this PSDA at any time giving thirty (30) calendar days' written notice to Recipient. If Recipient receives a notice of termination Recipient will immediately take all necessary steps to terminate its activities in an orderly manner. Immediately upon receiving a notice of termination Recipient will not make any further distribution and similar commitments.

15. Eligibility

Recipient shall provide prompt written notice to UNFPA if it is subject to any sanction (such as debarment, suspension or removal, whether temporary or permanent) imposed by any organization, entity or agency of the United Nations or by any organization within the World Bank group.

16. UN Security Council/ No Support to Terrorism

Recipient agrees to apply the highest reasonable standard of diligence to ensure that any Supplies delivered by UNFPA to Recipient: (a) are not used to provide support to individuals or entities associated with terrorism; (b) are not transferred to any individual or entity included in the Consolidated United Nations Security Council Sanctions List, available at <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list> (or such other URL as the United Nations may from time to time decide); and (c) are not used in any manner, including any import or export, prohibited by a resolution of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations.

17. Force Majeure; Other Changes in Conditions

17.1 In the event of and as soon as possible after the occurrence of any cause constituting *force majeure*, Recipient shall give notice and full particulars in writing to UNFPA, of such occurrence or change if Recipient is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Agreement. Recipient shall also notify UNFPA of any other changes in conditions or the occurrence of any event that interferes or threatens to interfere with its performance of this Agreement. On receipt of the notice required under this clause UNFPA shall take such action as it considers, in its sole discretion, to be appropriate or necessary in the circumstances, including the granting to Recipient of a reasonable extension of time in which to perform its obligations under this Agreement.

17.2 If Recipient is rendered permanently unable, wholly or in part, by reason of *force majeure* to perform its obligations and meet its responsibilities under this Agreement, UNFPA shall have the right to terminate this

Agreement on the same terms and conditions as are provided for in clause 14, "Termination", except that the period of notice shall be seven (7) days instead of thirty (30) days.

17.3 "*Force majeure*" as used in this clause 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 force or nature, provided that such acts arise from causes beyond the control and without the fault or negligence of the Recipient.

17.4 Recipient acknowledges that this Agreement may require Recipient to perform its obligations in humanitarian response, emergency relief or peacekeeping settings, including under conditions possibly involving civil unrest. Recipient acknowledges and agrees that, with respect to any obligations under this Agreement that Recipient must perform in or for any areas in which UNFPA is engaged or operating in, preparing to engage or operate in, or disengaging from, any delays or failure to perform such obligations arising from or relating to harsh conditions within such areas, or to any incidents of civil unrest occurring in such areas, shall not, in and of itself, constitute *force majeure*.

18. Other Provisions

18.1 Recipient represents and warrants that it has the right to conclude this PSDA, it has the authority and capacity to perform all its obligations, and the person signing on behalf of Recipient has on the date of his or her signature full powers and all the authorizations required to sign the PSDA.

18.2 Recipient shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this PSDA.

18.3 Recipient shall not assign, transfer, pledge or make other disposition of this PSDA or any parts thereof, or any of Recipient's rights, claims or obligations under this PSDA except with the prior written consent of UNFPA.

18.4 Recipient will use best efforts to eliminate or substantially reduce any adverse environmental impacts when conducting activities under this PSDA.

18.5 Nothing in or relating to this PSDA shall be deemed a waiver, express or implied, of any of the privileges and immunities of the United Nations, including UNFPA.

18.6 Recipient may not use the name, logo, emblem or official seal of UNFPA, or any abbreviation thereof, without the written permission of UNFPA.

19. Dispute Resolution

19.1 The parties shall use their best efforts to amicably settle any dispute, controversy, or claim arising out of this PSDA 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.

19.2 Any dispute, controversy, or claim between the parties arising out of this PSDA or the breach, termination, or invalidity thereof, unless settled amicably under the preceding paragraph, 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 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 PSDA, order the termination of the PSDA, 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 PSDA, as appropriate, all in accordance with the authority of the arbitral tribunal pursuant to Article 26 ("Interim Measures of Protection") 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 PSDA, 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.
