

MODEL CONTRACT

Contract No. _____

**Consulting Service Contract
for
[nature of services]**

by and between

Green Climate Fund, 12th floor, G-Tower, 175 Art Center-daero, Yeonsu-gu, Incheon,
22004 Republic of Korea

and

[CONTRACTOR, address]

referred to hereafter individually as a **Party** and collectively as the **Parties**

This Consulting **Service Contract** ("**Contract**") is dated [INSERT DATE]_____ and entered into between:

THE GREEN CLIMATE FUND, a designated operating entity of the financial mechanism under Article 11 of the United Nations Framework Convention on Climate Change and established pursuant to the Governing Instrument for the Green Climate Fund, with headquarters in Songdo, Republic of Korea, and postal address at 12th floor, G-Tower, 175 Art center-daero, 24-4 Songdo-dong, Yeonsu-gu, Incheon, 22004 Republic of Korea ("**GCF**" or the "**Fund**") which possesses juridical personality with legal capacity as is necessary for the exercise of its functions and enjoys such privileges and immunities as are provided for under the Governing Instrument for the Green Climate Fund and the Agreement between the Republic of Korea and the Green Climate Fund concerning the Headquarters of the Green Climate Fund; and

[*name of Contractor*], a [*company*][*entity*][*specify type of the entity*] organized and existing under the laws of [*specify jurisdiction*], with registration No. [*please fill in*] and with its principal place of business at [*specify address*] (the "**Contractor**"),

each a "**Party**" and together the "**Parties**".

WHEREAS GCF issued a [call for expression of interest] [request for proposal] [request for quotation] _____ on [*insert date*] ;

WHEREAS the Contractor and other service providers submitted proposals in response to such call;

WHEREAS GCF accepted the Contractor's proposal dated [*insert date*] for provision of services and the Parties wish to enter into a framework agreement with respect to these services; and

THE PARTIES HEREBY AGREE AS FOLLOWS:

1. The following documents (collectively referred to as "Contract Documents") constitute the entire Contract between the Fund and the Contractor for GCF's purchase of the Services:

- (A) This contract form
- (B) Appendix I: Special Conditions of Contract
 - (a) [*schedules*]
- (C) Appendix II: General Conditions of Contract
- (D) _____

In the event of any conflict, discrepancy or inconsistency within the above Contract Documents, then the documents shall prevail in the order listed above.

2. Whenever used in this Contract, the capitalized words and expressions shall have the meaning as are assigned to them in the Contract Documents referred to in paragraph 1 above unless modified in the Appendix I: Special Conditions of Contract or the context otherwise requires. In consideration of the payments to be made by GCF to the Contractor as set out in this Contract, the Contractor hereby covenants with GCF to provide the Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.

3. GCF hereby covenants to pay the Contractor in consideration of the performance and completion of Services and subject to the terms and conditions set forth in this Contract, the Contract Price or such other sum as may become due and payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

4. This Contract and each statement of work entered into hereunder constitute the entire agreement and understanding of the Parties with respect to its subject matter and supersedes all oral communication and prior writings with respect thereto, other than those writings expressly referred to or incorporated into this Contract.

IN WITNESS WHEREOF the Parties hereto, acting through their representatives thereunto duly authorized, have caused this Contract to be signed in their respective names as of the date below written and for this Contract to be executed with effect from the date above written.

For and on behalf of the GCF

For and on behalf of the Contractor

Signed by

Signed by

[NAME]
[TITLE]

[NAME]
[TITLE]

Date: _____

Date: _____

APPENDIX 1
SPECIAL CONDITIONS OF CONTRACT
[PROCUREMENT OF CONSULTING SERVICES]

Contract No. _____
Nature of Service: _____

1. GENERAL CONDITIONS OF CONTRACT; DEFINITIONS

- 1.1 The following Special Conditions of Contract (“SCC”) shall supplement the General Conditions of Contract (“GCC”). Whenever there is conflict, the provisions herein shall prevail over those in the GCC.
- 1.2 The terms defined in the GCC shall have the respective meanings therein set forth unless modified herein or the context otherwise requires. Additional terms used in this Contract shall have the following meaning:
- (a) “Authorized Representative” means, in respect of each Party, the person identified as such in accordance with Clause 3.
- (b) *[list any other capitalized terms that are not defined in the GCC]*
- 1.3 [The GCC are modified as set forth below and all other terms and conditions of the GCC shall remain in full force and effect as provided therein.

(a) *list any modifications to the GCC, if any.*¹

2. NOTICES

- 2.1 Any Notices, information or other communications required under the Contract shall be in writing and shall be delivered in person, by registered or certified mail, by facsimile or through electronic mail to the address and Authorized Representative.
- 2.2 Notices delivered in person shall be effective when delivered to the address specified below and personally received by the addressed Party’s Authorized Representative. Notices sent by registered or certified mail shall be effective on the date of delivery to the address specified hereunder, as shown in the return card for registered mail or the postmaster’s certification. Otherwise, Notices sent by facsimile or through electronic mails shall be effective upon successful transmission to the Party in accordance with the contact details specified Clause 3.

GCF address:

Green Climate Fund
G-Tower 12 Floor, 175 Art center-daero, 24-4 Songdo-dong
Yeonsu-gu, Incheon, 22004 South Korea
Telephone: 82-32-4586072
Fax: 82-32-4586093
E-mail: _____

CONTRACTOR address:

[Contractor’s address
Telephone:
Fax:

¹ No modification and/or amendments to the General Terms and Conditions may be made without the review of and clearance by the Office of the General Counsel. **Check and ensure that the periods for taking termination actions under the GCC are applicable for the contract. If not, please make the relevant modifications in the GCC.**

E-mail: _____]

3. AUTHORIZED REPRESENTATIVE; DESIGNATED OFFICER OF THE FUND

- 3.1 Each Party shall designate an Authorized Representative that shall coordinate all activities between the Fund and the Contractor under the Contract.
- 3.2 All Notices, information or other communications to be given by the Contractor to the Fund under the Contract shall be given to the Fund's Authorized Representative and the Designated Officer, and any action required or permitted to be taken, and any document required or permitted to be executed, under the Contract by the Contractor shall be taken or executed by the Contractor's Authorized Representative.
- 3.3 All Notices, information or other communications to be given by the Fund to the Contractor under the Contract shall be given to the Contractor's Authorized Representative, and any action required or permitted to be taken, and any document required or permitted to be executed, under the Contract by the Fund shall be taken or executed by the Fund's Authorized Representative.
- 3.4 The Contractor shall not take any order, directive, or instruction from unauthorized Fund staff. Questions relating to the authority of orders, directives or instructions given in the name of the Fund should be directed to the Fund's Authorized Representative and Designated Officer.

Authorized Representatives of GCF:

Attention: [*Procurement Specialist of GCF*]

Telephone:

Fax:

E-mail:

Designated Officer of GCF:

Attention: [*Head or senior officer of user division*]

Telephone:

Fax:

E-mail:

Authorized Representative of the CONTRACTOR:

Attention:

Telephone:

Fax:

E-mail:

Either Party may designate a new Authorized Representative or Designated Officer by serving written Notice on the other. The designation shall take effect immediately upon receipt of the Notice.

4. SCOPE OF THE CONTRACT

- 4.1 The Contractor shall perform the Services set out [*in Schedule 1*] [*below*²] in accordance with the Contract.
- 4.2 [The Contractor's key personnel assigned to perform the Services are:

(a) [provide a list]

² The description of the Services can be provided in a separate Schedule to the SCC or in Clause 4.1 as appropriate.

- 4.3 During the provision of the Services, if substitution of Contractor's [key personnel] [experts] is necessary, the Contractor shall propose other experts or at least the same level of qualifications for approval by the Fund.
- 4.4 [The Contractor shall obtain the Fund's prior approval in writing before entering into a subcontract for engaging a subconsultant for the performance of any part of the Services.]

5. CONTRACT PERIOD

- 5.1 Unless sooner terminated pursuant to the Contract, the Contract shall remain valid for [specify the Contract term] starting from [*specify start date*] ("Contract Period"). [The Contractor shall perform the Services from the Effective Date until [*specify completion date*] ("Completion Date").]

6. CONTRACT PRICE

- 6.1 For and in consideration of the Contractor's full and faithful performance of the Services during the Contract Period in accordance with the Contract, the Fund shall pay the Contractor [*specify contract price*] ("*Contract Price*"):

- (a) [Lump-sum Contract/Output based payment];
- (b) [Time-based Contract];
- (c) [Retainer fee Contract]; and/or
- (d) [In-definitive Delivery Contract: Price Agreement i.e. on-call specialized services] [, and plus
- (e) Reimbursement expenditures³]

In any event, the Contract Price shall not exceed _____ (_____).

- 6.2 The Contractor warrants that the Contract Price specified herein covers actual and contingent costs that the Contractor will incur in performing the Services, including but not limited to any additional compulsory statutory benefits and social contributions that the Contractor's employees may be legally or officially entitled to or which the Contractor may be legally or officially required to pay after execution of the Contract.
- 6.3 [The Parties may agree on adjustments to the Contract Price [in accordance with any price adjustment mechanisms elaborated [*in Schedule 1 to the SCC*] [*below*]].

7. INVOICING; PAYMENT

- 7.1 The Contract Price is payable as follows:

- (i) 20% on Contract Signing
- (ii) 30% on submission of draft report
- (iii) 50% on submission of final report

The Fund shall make payments under the Contract subject to the following conditions:

- (a) Payments shall be made only after the Designated Officer certifies that the Services were evaluated and found to have been performed or provided in accordance with the terms of the Contract.
- (b) The Contractor's request for payment shall be made to the Fund in writing; accompanied by an invoice describing the Services performed delivered and documents required under the Contract; and upon fulfillment of other obligations stipulated in the Contract.
- (c) The Fund shall pay an invoiced amount no later than thirty (30) days after the date on which the Contractor submits a duly completed and valid invoice or claim to the Fund. The Contractor shall accept payment as full satisfaction of the Contractor's entire claim arising out of or in connection with the Contract.

³ Specify, if any, types of reimbursement expenditures and how those will be treated.

- (d) The Contractor shall submit such documents supporting the Contractor's invoice or statement of account, as the Fund may reasonably require.
- (e) Unless otherwise agreed with the Contractor, the Fund shall remit payment by electronic transfer. [The Contractor shall provide the Fund with the Contractor's bank details such as bank name, bank address/branch, account name, and account number on its invoices or request for payment.]

Contractor's bank details for payment are:

Bank name:

Account No:

Bank Code:

SWIFT:

Account Holder:

8. [PERFORMANCE STANDARDS⁴

- 8.1 ***[Specify and list applicable performance standards and specifications, and the details of the tests and/or evaluation that the Fund requires, if there are any].***

9. [INSURANCE

- 9.1 In addition to the insurance coverages specified in the GCC, the Contractor shall take out and maintain at all times during the term of the Contract and at its own cost the following insurance policies:

(a) ***Specify additional insurance coverages and amount, if any.***

10. PERFORMANCE SECURITY

- 10.1 To secure performance of its obligations under the Contract, the Contractor shall provide the Fund with Performance Security in an amount [_____ Korean Won] [US Dollars] [such other freely convertible currency acceptable to the Fund]] and be in form of ***[select one of the following forms]:***

- (a) Cash, cashier's check, manager's check, or bank draft;
- (b) Bank guarantee or an irrevocable stand-by letter of credit issued by a reputable bank in Songdo, Republic of Korea or abroad, and acceptable to GCF;
- (c) Sovereign guarantee in the amount of one hundred per cent (100%) of the Contract Price; or
- (d) Such form as may be specified in the SCC.]

- 10.2 The Fund shall have the right to unilaterally call, to the extent of the relevant loss incurred by the Fund, the Performance Security when the Fund determines that:

- (a) The Contractor, in violation of or contrary to its warranties under the Contract, does not have the required license, permit, power and/or authority to enter into and fully perform its obligations under the Contract;
- (b) The Contractor has breached the Contract and, if such breach is capable of remedy, the Contractor has failed to remedy such breach within any grace period specified in this Contract or granted to the Contractor by the Fund or agreed by the Parties; or
- (c) the costs incurred by the Fund cannot be compensated under Clause 11 of this SCC.

- 10.3 The Contractor shall submit the Performance Security within fifteen (15) days from receipt of the Notice of award from the Fund, and the Fund shall discharge and return the Performance Security to the Contractor not later than thirty (30) days following the date on which the Contractor no longer owes any actual or contingent obligations or liabilities to the Fund.]

11. [DEDUCTIONS

- 11.1 If the Contractor's performance of the Contract falls below the standards set out in the Contract, the Fund shall, notwithstanding any further action which it may be entitled to take in accordance with the

⁴ In correspondence to Clause 8 of the GCC.

Contract or under applicable laws, calculate the corresponding deduction or deductions to be applied to the total Contract Price. Such deduction or deductions shall be calculated either in accordance with the mechanism set out in this SCC or, where no such mechanism is specified, by the Fund acting reasonably and taking into account all relevant considerations. The Fund shall deduct the aforementioned amount from the Contractor's succeeding payments, as applicable. If, the amount of the deduction or deductions is greater than the remaining amount payable by the Fund to the Contractor, the Contractor shall, within thirty (30) days from Fund's Notice thereof to the Contractor, reimburse the Fund an amount equal to the difference between the amount of the deduction or deductions and the remaining amount payable to the Fund.

12. [LIQUIDATED DAMAGES]

12.1 The Contractor shall pay liquidated damages to the Fund at the rate [_____%] of the Contract Price for each day of Delay after the Completion Date. The total amount of liquidated damages shall not exceed the [Contract Price] [_____% of the total Contract Price]. The Fund may deduct liquidated damages from payments due to the Contractor. Payment of liquidated damages shall not affect the Contractor's liabilities under the Contract.]

**General Conditions of Contract
PROCUREMENT OF CONSULTING SERVICES
Nodalis Conseil**

**Provision of Consultancy Services for Review of the financial terms and conditions of the
Green Climate Fund's financial instruments and review of the interim policy on fees
Contract No. GCF/2017/C/015**

TABLE OF CONTENTS

1.	DEFINITIONS	10
2.	SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF THE FUND	11
3.	TAX EXEMPTION	12
4.	PROHIBITED PRACTICES	12
5.	CONFLICT OF INTEREST	14
6.	INSURANCE.....	14
7.	STANDARD OF SERVICE.....	14
8.	CONTRACTOR'S RELATED PERSONS	15
9.	CONTRACTOR'S UNDERTAKING	15
10.	WARRANTIES AND REPRESENTATIONS	16
11.	EQUIPMENT FURNISHED BY THE FUND TO THE CONTRACTOR	17
12.	DELAY.....	17
13.	FORCE MAJEURE	17
14.	CONTRACT AMENDMENT.....	19
15.	TERMINATION BY THE FUND.....	19
16.	TERMINATION BY THE CONTRACTOR	20
17.	CONFIDENTIAL INFORMATION	20
18.	USE OF DOCUMENTS; DOCUMENTS TO BE THE PROPERTY OF THE FUND.....	21
19.	AUDITS AND INVESTIGATOINS	22
20.	PUBLICITY, AND USE OF THE NAME, TRADEMARK OR LOGO	22
21.	RELATIONSHIP BETWEEN THE PARTIES	22
22.	SOURCE OF INSTRUCTION	23
23.	GOVERNING LAW AND LANGUAGE	23
24.	SETTLEMENT OF DISPUTES	23
25.	INDEMNIFICATION	23
26.	TRANSFER AND SUBCONTRACTING	24
27.	ENTIRETY AND SEPARABILITY	24
28.	WAIVER.....	26
29.	RIGHTS OF THIRD PARTIES	26
30.	COUNTERPART	26

13. DEFINITIONS

13.1 In these General Conditions of Contract:

(c) “Confidential Information” means (i) all information relating to the Fund of which the Contractor becomes aware in its capacity as Contractor or which is received by the Contractor in connection with the Contract and includes information given orally and any document, electronic file or any other way of representing or recording information which contains or is derived or copied from such information, and (ii) information which is described and/or marked as “confidential” at the time of disclosure with respect to information disclosed by the Contractor to the Fund;

(d) “Contract” means the contract signed between the Fund and the Contractor with respect to the provision of the Services, incorporating these General Conditions of Contract and all appendices, attachments, schedules and agreements supplemental to the Contract, as such Contract may be amended from time to time;

(e) “Contractor” means the party (includes any entity, whether public, quasi-public or private) that performs the Services using its own means, methods or manner of accomplishing the desired result pursuant to the Contract;

(f) “Contractor-Related Persons” means any of the Contractor’s approved subcontractors and any of their and the Contractor’s officers, directors, employees, representatives, attorneys, agents, affiliates or approved subcontractors;

(g) “Convention” means the United Nations Framework Convention on Climate Change;

(h) “Delay” means delay in the completion of the Service in accordance with the terms and conditions set forth in the Contract;

(i) “Designated Officer” means the Fund officer, usually a staff member of the department within the Fund that requested the Services, who oversees the delivery of the Services, and is responsible for receiving and internally accounting for the Services and/or administering and monitoring performance of the Services in accordance with the performance standards and requirements specified in the Contract;

(j) “Force Majeure” means any act of God, war (whether declared or not), invasion, revolution, insurrection or any other unforeseeable act or event of a similar nature or force which is beyond the Parties’ control and which prevents either of the Parties from fulfilling any or all of their obligations under the Contract;

(k) “Fund” means the Green Climate Fund, with headquarters in Songdo, Republic of Korea;

(l) “Fund Premises” means the Headquarters of the Fund or any other premises as may be specified by the Fund in the Contract;

(m) “Governing Instrument” means the Governing Instrument for the Green Climate Fund approved by the Conference of the Parties to the Convention pursuant to, and set out in the annex to decision 3/CP.17;

(n) “GCC” means these General Conditions of Contract;

- (o) "Headquarters" means the headquarters of the Fund in Songdo, Republic of Korea;
- (p) "Headquarters Agreement" means the "Agreement between the Green Climate Fund and the Republic of Korea regarding the Headquarters of the Green Climate Fund", dated 10 June 2013;
- (q) "Notices" means all written communication required under the Contract to be exchanged between the Parties, including but not limited to, requests, permissions or consents;
- (r) "Party" or "Parties" means either or both the Fund and the Contractor, as the context requires;
- (s) "Prohibited Practices" means collectively the following terms and each term shall have the meaning ascribed herein:
- i. "corrupt practice" is the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;
 - ii. "fraudulent practice" is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, a party to obtain a financial or other benefit or to avoid an obligation;
 - iii. "coercive practice" is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;
 - iv. "collusive practice" is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;
 - v. An "obstructive practice" includes deliberately destroying, falsifying, altering, or concealing evidence material to an investigation; making false statements to investigators in order to materially impede an investigation; threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation; or materially impeding the Fund's contractual rights of audit or access to information; and
 - vi. An "abuse" is theft, misappropriation, waste or improper use of property or assets related to the Fund-financed activities, either committed intentionally or through reckless disregard.
- (t) "Services" means the services to be provided by the Contractor pursuant to the Contract as well as any incidental services, if any, which are required as a consequence of the provision of the Services.

14. SPECIAL CHARACTER, PRIVILEGES AND IMMUNITIES OF THE FUND

- 14.1 The Contractor acknowledges the special character of the Fund as a designated operating entity of the financial mechanism under Article 11 of the Convention and established pursuant to the Governing Instrument, which enjoys such status, privileges and immunities as are provided for under the Governing Instrument and the Headquarters Agreement. None of the provisions of the Contract shall be deemed to derogate from any provision of the Governing Instrument and the Headquarters Agreement and the Contractor explicitly acknowledges the privileges and immunities of the Fund as provided in the Governing Instrument and the Headquarters Agreement. For the avoidance of doubt, nothing in this Contract shall constitute or be considered to be a limitation upon or waiver of the privileges and immunities of the Fund, which are specifically reserved. To better assess its rights and obligations under the Contract, the

Contractor acknowledges that it has reviewed the Governing Instrument and the Headquarters Agreement, copies of which are available on the Fund's website: www.greenclimate.fund.

15. TAX EXEMPTION

- 15.1 The Contractor acknowledges and accepts that under Article 10 of the Headquarters Agreement, the property of the Fund, including the property of any offices, subsidiary bodies or facilities established by the Fund, the Fund's operations and transactions, and any property of the Fund in transit to or from the Headquarters, are:
- (a) Exempt from all direct taxes, except those which are, in fact, no more than charges for public utility services;
 - (b) Exempt from all indirect taxes, including any value-added tax and/or other similar tax, and excise duties levied on important purchases of goods and services for official purposes; and
 - (c) Exempt from customs duties, prohibitions and restrictions on imports and exports in respect of articles of any kind imported or exported by the Fund for its official use, except for prohibitions and restrictions on imports or exports relating to health and safety.
- 15.2 The Contractor shall be responsible to pay any taxes, duties, fees or other impositions which may be levied on or in connection with the Contract and performance of the Services in the Republic of Korea or in any other country, the amount of which is deemed to have been included in the payment duly payable under the Contract. The Fund shall not be liable to reimburse any such taxes.

16. PROHIBITED PRACTICES

- 16.1 The Fund, the Contractor and the Contractor-Related Persons shall observe the highest standards of ethics during the entire term of the Contract and shall refrain from engaging in any Prohibited Practices.
- 16.2 Promptly upon becoming aware that the Contractor or any Contractor-Related Persons have or may have engaged in a Prohibited Practice, the Contractor shall notify the same to the Fund in writing. The Contractor shall procure that each Contractor-Related Person immediately notifies the Contractor if it suspects that any Contractor-Related Person has or may have engaged in a Prohibited Practice. The Contractor shall investigate the actual or suspected engagement in, or allegations of Prohibited Practices and report preliminary and final findings of investigations to the Fund.
- 16.3 The Contractor shall use reasonable efforts to ensure that funds paid to the Contractor by the Fund are not used to finance, support or conduct terrorism.
- 16.4 Without prejudice to any of the Fund's other rights under the Contract, if the Fund becomes aware that the Contractor or any Contractor-Related Person has engaged in a Prohibited Practice, whether during the term of the Contract or during the procurement process for the Contract, the Fund may take such measures as it deems necessary to protect its interests, including but not limited to declaring the Contractor or relevant Contractor-Related Persons ineligible to participate in any Fund-financed activities indefinitely or for a stated period of time except under such conditions as the Fund deems appropriate.
- 16.5 The remuneration of the Contractor under the Contract shall constitute the Contractor's sole remuneration in connection with the Services to be provided under the Contract, and the Contractor shall not accept for its own benefit any trade commission, discount, or similar payment in connection with activities pursuant to the Contract or to the Services, or in the discharge of its obligations under the Contract. The Contractor shall ensure that any Contractor-Related Person similarly shall not receive any such additional remuneration.

- 16.6 The Contractor warrants that no official of the Fund or of any of the parties to the Convention has been given or promised, or will be offered by the Contractor any direct or indirect benefits, including but not limited to fees, gratuities, rebates, gifts, commissions or other payments, arising in connection with the Contract, the Services, or the award thereof. The Contractor agrees that breach of this provision is a cause for termination of the Contract.
- 16.7 The Contractor agrees to reimburse the Fund for any losses the Fund suffers as a direct result of the Contractor's breach of the foregoing obligations, including the costs of an investigation into the Contractor's conduct where such investigation confirms that the Contractor has breached such provisions.

17. CONFLICT OF INTEREST

- 17.1 The Contractor shall strictly avoid and shall ensure that the Contractor-Related Persons avoid, during the term of the Contract, carrying out any other assignments that may give rise to a conflict of interest with respect to the Contractor's obligations under this Contract.
- 17.2 The Contractor warrants that at the time the Contract is accepted, the Contractor and Contractor-Related Persons are not engaged in any assignments that would that would violate this Clause. The Contractor shall disclose to the Fund full particulars of any such conflict of interest which may arise during the term of the Contract.
- 17.3 The Fund shall undertake measures to manage actual or potential conflicts of interest, including termination of the Contract, as circumstances may warrant. Such rights are without prejudice to any other remedies or rights of action which have accrued or which may subsequently accrue to the Fund in connection with the Contract.
- 17.4 For the purposes of this Clause 5, "conflict of interest" means any situation in which a party has interests or relationships that could, or could be deemed to, improperly influence that party's performance of official duties or responsibilities, contractual obligations, or compliance with applicable laws and regulations.

18. INSURANCE

- 18.1 The Contractor shall take out and maintain at all times during the term of the Contract and at its own cost appropriate insurance coverage, which coverage shall include such insurances as may be required by the law of the country of incorporation of the Contractor and/or the laws of the country in which the Services are to be performed, and in addition, the following minimum coverages or such other coverage as may be agreed upon in writing between the Parties:
- (a) workers' compensation insurance, or its equivalent, or employer's liability insurance, or its equivalent, with respect to the Contractor's personnel sufficient to cover all claims for injury, death and disability, or any other benefits required to be paid by law, in connection with the performance of the Contract;
 - (b) insurance against all risks in respect of its property and any equipment used for the performance of the Contract;
 - (c) general commercial liability Insurance, for all operations including contingent liability coverage for Contractor-Related Persons and contractual liability with minimum limits of US Dollars 1,000,000 million per occurrence; and
 - (d) If the Services are professional in nature, professional liability insurance in the amount of US Dollars 5,000,000.
- 18.2 The Contractor shall maintain the insurance taken out under the Contract with reputable insurers that are in good financial standing and that are acceptable to the Fund. The Contractor shall promptly notify the Fund concerning any cancellation or material change of insurance coverage required under the Contract.
- 18.3 The Contractor shall, if requested by the Fund, provide evidence that the insurance was taken out at the time required and continues to be in effect until the Contractor has discharged all of its actual and contingent obligations and liabilities in connection with the Contract.

19. STANDARD OF SERVICE

- 19.1 The Contractor shall provide the Services in good faith, with due professional care and skill and in a manner that meets or exceeds prevailing industry and/or professional standards and undertakes to ensure that the Services do not infringe any third party trade secret, copy right, patent or trademark.

- 19.2 The Contractor agrees to make its best endeavour to uphold and to ensure that the Contractor-Related Persons also uphold the ten principles of the United Nations Global Compact. The Contractor acknowledges that it has reviewed these principles, which are available on the United Nations Global Compact website: www.unglobalcompact.org.
- 19.3 In respect of any matter relating to the Services, the Contractor shall always act, in respect of any matter relating to this Contract or the Services, as a faithful service provider to the Fund, and shall at all times support and safeguard the Fund's legitimate interests in any dealings with third parties.

20. CONTRACTOR-RELATED PERSONS

- 20.1 The Contractor-Related Persons who will provide the relevant Services will be listed by name in the Contract. The Contractor shall supervise and control the Contractor-Related Persons at all times. Such Contractor-Related Persons are hereby approved by the Fund.
- 20.2 In respect of other Contractor-Related Persons the Contractor may propose to use in providing the relevant Services, the Contractor shall submit a copy of their biographical data for the Fund's review and approval.
- 20.3 The Fund may request the withdrawal or replacement of any of the Contractor-Related Person if the Fund finds their qualifications and training to be inconsistent with the personal and professional qualifications agreed with the Contractor and/or their performance to be inadequate.
- 20.4 The withdrawal or replacement of the Contractor-Related Person shall be carried out as quickly as possible and in a manner that will not adversely affect the performance of obligations under the Contract. All expenses related to the withdrawal or replacement of the Contractor's personnel shall, in all cases, be borne exclusively by the Contractor.
- 20.5 Prior to employing individuals or subcontractors to work under this Contract on the Fund Premises, the Contractor shall, at its own expense, perform or cause to be performed the relevant background checks, and maintain, or cause to be maintained, the results of the background checks in its employee's and its subcontractor's employee's file in accordance with the applicable laws to ensure that reliable and competent individuals are selected.
- 20.6 The Contractor shall ensure that all Contractor-Related Persons behave in accordance with generally acceptable professional standards and good industry practice in performing the Services under the Contract.
- 20.7 In rendering the Service, the Contractor shall neither discriminate against Fund personnel either directly or indirectly on the basis of race, colour, ethnic or national origin, disability, sex or sexual orientation, religion or belief, or age nor engage in or condone sexual harassment of any form.

21. CONTRACTOR'S UNDERTAKING

- 21.1 The Contractor shall immediately notify the Fund in writing if:
- (a) the Contractor merges with, acquires, or transfers all or substantially all of its assets to another entity;
 - (b) any person or entity acquires directly or indirectly the majority of the beneficial ownership rights in the Contractor;
 - (c) any person or entity acquires directly or indirectly the power to elect a majority of the board of directors of the Contractor, or otherwise acquires directly or indirectly the power to control the policy making decisions of the Contractor;

- (d) the Contractor is dissolved; applies for insolvency or bankruptcy; or otherwise admits in writing its inability to pay its outstanding obligations or liabilities;
- (e) the Contractor is administratively or judicially declared insolvent or bankrupt, placed under receivership, administration, rehabilitation or liquidation or any other such equivalent process;
- (f) the Contractor's financial condition becomes significantly unstable and threatens to jeopardize the Contractor's ability to perform its obligations under the Contract;
- (g) the Contractor loses any license or authorization required to perform its obligations under the Contract; or
- (h) the Contractor faces any event beyond its control or a situation that makes it impossible for it to carry out its obligations under the Contract,

and the Fund and the Contractor shall, without prejudice to any other provision of the Contract, meet to discuss and use reasonable endeavours to agree alternative arrangements to ensure full performance of the Contract under any or all of the above circumstances.

- 21.2 The Contractor shall obtain certificates, permits, approvals, licenses and other documents required under applicable laws, regulations and decrees which are required in order to perform the Services under the Contract. If the Contractor requests the Fund's assistance in obtaining such permits, approvals, or licenses from local public authorities, the Fund may exert reasonable efforts to assist the Contractor in completing such requirements in a timely and expeditious manner.
- 21.3 The Contractor shall perform its obligations under this Contract diligently, observe good social management practices, and comply with relevant laws, regulations, decrees and orders concerning environmental protection, corporate social responsibility and employees of the Contractor engaged in performing the Services.
- 21.4 The Contractor agrees to make its best endeavour to uphold and to ensure that the Contractor-Related Persons also uphold the ten principles of the United Nations Global Compact. The Contractor acknowledges that it has reviewed these principles, which are available on the United Nations Global Compact website: www.unglobalcompact.org.

22. WARRANTIES AND REPRESENTATIONS

22.1 The Contractor warrants and represents that:

- (a) it has full capacity, authority and consent, including the consent of its parent company, where applicable, and that it possesses the necessary licenses, permits, and power to execute and perform its obligations under the Contract;
- (b) the Contract is executed by a duly authorized representative of the Contractor;
- (c) as of the date the Contract becomes effective, all information contained in the Contractor's bid or proposal remains true, accurate and not misleading, except those that the Contractor may have specifically disclosed in writing to the Fund before signing the Contract;
- (d) it is in compliance with, and shall continue to comply with, all applicable laws, ordinances, rules, regulations, and lawful orders of public authorities of any jurisdiction in which the Services shall be performed under this Contract;

- (e) no claim is being asserted and no litigation, arbitration or administrative proceeding is presently in progress, pending or being threatened against the Contractor or any of its assets that could adversely affect the Contractor's ability to perform the Services under the Contract;
- (f) it is not subject to any contractual obligation that would adversely affect the Contractor's ability to perform the Services under the Contract; nor has the Contractor done or omitted to do anything that could adversely affect its assets, financial condition or position as a going business concern;
- (g) it has not filed nor is it facing proceedings for winding up its business or for dissolution, insolvency, bankruptcy, or the appointment of a receiver, liquidator, administrator or similar officer in relation to any of the Contractor's assets or revenue. The Contractor expressly warrants its financial viability and shall permit the Fund to inspect the Contractor's accounts, financial statements and other records relevant to the performance of the Contractor under the Contract, or otherwise have these accounts and records audited externally, as the Fund may deem necessary; and
- (h) it has undertaken all financial accounting and reporting activities required under the generally accepted accounting principles that apply to the Contractor and in the country where it is registered and has complied with applicable securities and tax laws and regulations.

23. EQUIPMENT FURNISHED BY THE FUND TO THE CONTRACTOR

- 23.1 Machines or equipment that the Fund issues or gives access to the Contractor for free shall remain the property of the Fund which the Fund may recover from the Contractor at any time. For the purposes of this Clause 11, "machines or equipment" shall include the Fund owned or subscribed software assets either provided directly or via the Internet. The Contractor shall not, under any circumstances, have a lien or any other interest over or in such machines or equipment; and the Contractor shall at all times possess them only as a fiduciary agent and bailee of the Fund. The Contractor shall not commingle the machines or equipment with its own, and shall accordingly advise all Contractor-Related Persons and other interested third parties of the Fund's ownership of such machines or equipment.
- 23.2 The Contractor shall compensate the Fund for any loss of or damage to machines or equipment that the Fund has provided to the Contractor to the extent that such loss or damage results from the willful act or negligence of the Contractor or a Contractor-Related Person. Upon expiration or early termination of the Contract, the Contractor shall immediately return, without need of demand, the machine(s)/equipment that the Fund has supplied to it.

24. DELAY

- 24.1 If the Contractor or its subcontractor(s) encounters conditions impeding timely performance of the Service, the Contractor shall notify the Fund in writing of the fact of the Delay, its likely duration and cause(s) within three (3) days of its occurrence. The Fund shall evaluate the situation and advise the Contractor if the time for performance can be extended.

25. FORCE MAJEURE

- 25.1 Neither Party shall be liable to the other for any Delay in performing or failure to perform its obligations under the Contract if the Delay or failure is caused by *Force Majeure*. In such circumstances, the Fund shall not be entitled to call the Contractor's performance security, if specified in the Contract or terminate the Contract for default.
- 25.2 In the event of *Force Majeure*, the affected Party shall promptly notify the other Party in writing of the relevant circumstances. Such notification shall include the nature of the event of *Force Majeure*, the obligations the performance of which has been prevented as a result of the event of *Force Majeure*, the likely duration of the event of *Force Majeure* and the steps that the affected

Party is taking to limit the effect of and to bring an end to the event of *Force Majeure*. Unless otherwise directed by the Fund in writing, the Contractor shall continue to perform its obligations under the Contract to the extent possible notwithstanding the existence of an event of *Force Majeure* and undertake reasonable alternative means to perform the obligations affected by the event of *Force Majeure*. The affected Party shall promptly notify the other Party as soon as the event of *Force Majeure* ceases to exist and the affected Party is able to resume the performance of its obligations under the Contract.

26. CONTRACT AMENDMENT

- 26.1 The Fund and the Contractor shall not vary or modify the terms and conditions of the Contract except by prior written amendment duly executed by the Parties.
- 26.2 Subject to Clause 14.1 above, changes in the scope of the Services, either requested by the Fund or necessitated by other events or conditions, which are acknowledged and agreed by both Parties, that would increase or decrease the cost or time needed to perform the Services shall be cause for an equitable increase or decrease in the remuneration agreed under the Contract and/or modification or extension of the schedule for performing the Services. For the avoidance of doubt, the Contractor shall not be entitled to request price adjustments as a result of fluctuations in the foreign exchange rate, an increase in the Contractor's actual or contingent costs or on any other similar grounds.
- 26.3 If the Contract shall be extended for additional periods in accordance with the terms and conditions of the Contract, the terms and conditions applicable to any such extended term of the Contract shall be the same terms and conditions as set forth in the Contract, unless the Parties shall have agreed otherwise pursuant to an amendment concluded in accordance with Clause 14.1.

27. TERMINATION BY THE FUND

Termination for convenience: change of circumstances

- 27.1 The Fund may terminate the Contract in whole or in part at any time by submitting not less than thirty (30) days written Notice of such termination to the Contractor if the Fund determines, in its sole and absolute discretion, that a termination is in its best interest or if the mandate, policies and/or funding of the Fund applicable to the performance of the Contract is curtailed, changed or terminated. Such Notice shall state that termination is for the Fund's convenience, the extent to which performance of Services is terminated, and the termination date. Unless otherwise instructed by the Fund, the Contractor shall stop work immediately on receipt of Notice and follow the instructions of the Fund.
- 27.2 In the event of a termination for convenience, the Contractor shall be entitled to be paid for the Services satisfactorily and properly performed by the Contractor prior to the effective date of termination, provided however, that such payment shall not exceed the total value of the Contract after adjustment to account for the price associated with Services not performed. The Contractor shall not be allowed, and expressly waives, payment for profit on Services which was not performed as of the termination date.

Termination for Force Majeure

- 27.3 The Fund may terminate the Contract, by not less than thirty (30) days' written Notice of termination to the Contractor if, as a result of *Force Majeure*, the Contractor is unable to perform a material portion of the Services for a continuous period of not less than ninety (90) days. In the event of termination for Force Majeure, the Contractor shall be entitled to be paid for Services satisfactorily and properly performed prior to the effective date of termination in accordance with the Contract.
- 27.4 The Fund may, at anytime before the effective date of termination, decide to withdraw the Notice to terminate issued by the Fund pursuant to Clause 15.3 or issued by the Contractor pursuant to Clause 16.1(a) and notify thereof in writing to the Contractor if the event(s) of Force Majeure ceases to exist and the Contractor is able to resume its full performance under the Contract in which case the Contractor shall continue to perform its obligations under the Contract starting from the date determined by the Fund.

Termination for Default

27.5 The Fund may terminate the Contract immediately by serving a written Notice to the Contractor specifying the reasons for the default if:

- (a) the Contractor undertakes legal proceedings to dissolve or wind up its business, or be declared bankrupt and/or insolvent;
- (b) a creditor or encumbrancer attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the Contractor's assets and such attachment or process is not discharged within fifteen (15) days;
- (c) there is a change of ownership or control with respect to the Contractor;
- (d) the Contractor otherwise loses legal capacity to contract;
- (e) the Contractor:
 - i. breaches a material provision of the Contract and fails to remedy such breach within thirty (30) days; or
 - ii. materially breaches any other provision of the Contract twice or more time in a continuous six (6) month period and, in each case, fails to remedy the relevant breach within 30 days, and/or
 - iii. breaches any representations or warranties made under this Contractand, in either case, if such breach is capable of remedy, fails to remedy such breach within a reasonable time period notified to it by the Fund; or
- (f) the Fund determines that the Contractor or a Contractor-Related Person has committed or engaged in unlawful acts, including the Prohibited Practices during the procurement and/or implementation of the Services or the Contract.

28. TERMINATION BY THE CONTRACTOR

28.1 The Contractor may terminate the Contract by giving not less than thirty (30) days' written Notice to the Fund:

- (a) **if the Fund fails to pay any undisputed amount of monies due to the Contractor pursuant to the Contract, within thirty (30) days of receiving written Notice from the Contractor that such payment is overdue; or**
- (a) if, as the result of Force Majeure, the Contractor is unable to perform a material portion of the Services for a period of not less than ninety (90) days.

29. CONFIDENTIAL INFORMATION

29.1 The Parties shall treat each other's Confidential Information as confidential in accordance with this Clause, use the Confidential Information solely for the purpose for which it was disclosed, and exert diligent efforts to safeguard and avoid unauthorized disclosure of the other Party's Confidential Information to third parties without the disclosing Party's prior written consent.

29.2 Unless the Fund states otherwise, disclosures by the Fund to the Contractor shall be deemed confidential. The Contractor may only disclose the Fund's Confidential Information to the Contractor-Related Persons who are directly involved and who need to know the information in providing the Services. The Contractor shall ensure that such Contractor-Related Persons are

aware of and shall comply with the Contractor's obligations as to confidentiality. For the avoidance of doubt any unauthorized disclosure of the Fund's Confidential Information by a Contractor-Related Person shall be deemed to be a breach of this Clause by the Contractor. The Fund may, as it deems appropriate and in light of the particular Services to be performed by the Contractor, request the Contractor to require any Contractor-Related Person to sign a confidentiality undertaking substantially similar to this Clause 17 before commencing any work related to the Services covered by the Contract.

- 29.3 The obligations of confidentiality specified in Clause 17 shall not apply to any information, including Confidential Information that:
- (a) is in the public domain at the date of this Contract or subsequently becomes generally available to the public (other than as a result of its disclosure by the receiving Party or its representatives in breach of this Clause 17);
 - (b) was made available to the receiving Party other than pursuant to a breach of confidence on a non-confidential basis before disclosure by the disclosing Party under this Contract;
 - (c) the Parties agree in writing is not confidential or may be disclosed; and
 - (d) is developed by or for the receiving Party independently of and without reference to any information disclosed by the disclosing Party.
- 29.4 Subject to and without any waiver of the privileges and immunities of the Fund, if the Contractor is or may be required to disclose Confidential Information belonging to the Fund pursuant to any applicable law, regulation or judicial or arbitral decision, it shall promptly notify the Fund of the same and shall cooperate with the Fund and use its best endeavours to prevent and/or limit the extent of disclosure.
- 29.5 The Fund may disclose Confidential Information to the extent as required pursuant to its Governing Instrument, or policies of the Fund promulgated thereunder.
- 29.6 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. If requested by the disclosing Party, the receiving Party shall return to the disclosing Party all Confidential Information in written form or destroy or (to the extent technically practicable) permanently erase all Confidential Information (or copy thereof) provided to the receiving Party in written or electronic form; save to the extent that the receiving Party is required to retain such Confidential Information (or a copy thereof) by applicable law, rule or regulation, or to the extent that such information is contained in any computer records or files which have been created pursuant to the receiving Party's automatic archiving and back-up procedures. To the extent that the receiving Party retains any such Confidential Information in accordance with this provision, the confidentiality obligations set out herein shall continue to apply with respect to such Confidential Information.

30. USE OF DOCUMENTS; DOCUMENTS TO BE THE PROPERTY OF THE FUND

- 30.1 Subject to Clause 18.3, all products, documents, materials, and information submitted to the Fund, and all relevant data and supporting materials compiled in performing the Services, shall be the property of the Fund, shall be used solely for purposes related to the Contract, shall be made available for use or inspection by the Fund at reasonable times and in reasonable places, shall be treated as confidential, and shall be delivered only to the Fund's Designated Officer on completion of Services under the Contract.
- 30.2 Subject to Clause 18.3, the Fund shall be entitled to all intellectual property and other proprietary rights including, but not limited to, patents, copyrights, and trademarks, with regard to processes, inventions, ideas, know-how, or products, documents and other materials which the Contractor has developed for the Fund under the Contract and which bear a direct relation to or are produced

or prepared or collected in consequence of, or during the course of, the performance of the Contract. The Contractor acknowledges and agrees that such products, documents and other materials constitute works made for hire for the Fund.

- 30.3 To the extent that any such intellectual property or other proprietary rights consist of any intellectual property or other proprietary rights of the Contractor: (i) that pre-existed the performance by the Contractor of its obligations under the Contract, or (ii) that the Contractor may develop or acquire, or may have developed or acquired, independently of the performance of its obligations under the Contract, the Fund does not and shall not claim any ownership interest thereto, and the Contractor grants to the Fund a perpetual license to use such intellectual property or other proprietary rights solely for the purposes of and in accordance with the requirements of the Contract.
- 30.4 At the request of the Fund, the Contractor shall take all necessary steps, execute all necessary documents and generally assist in securing such proprietary rights and transferring or licensing them to the Fund in compliance with the requirements of the applicable law and of the Contract.

31. AUDITS AND INVESTIGATIONS

- 31.1 Each invoice paid by the Fund shall be subject to a post-payment audit by auditors, whether internal or external, of the Fund or by other authorized and qualified agents of the Fund at any time during the term of the Contract and for a period of three (3) years following the expiry or early termination of the Contract. The Fund shall be entitled to a refund from the Contractor for any amounts shown by such audits to have been paid by the Fund other than in accordance with the terms and conditions of the Contract.
- 31.2 The Fund may conduct investigations relating to any aspect of the Contract or the award thereof, the obligations performed under the Contract, and the operations of the Contractor generally relating to non-performance of the Contract at any time during the Contract term and for a period of three (3) years following the expiry or early termination of the Contract.
- 31.3 The Contractor shall keep and maintain for at least three (3) years after the expiry or early termination of the Contract, or as long a period as may be agreed between the Parties, full and accurate records of the Contract including the Services supplied under it and all payments made by the Fund under the Contract. The Contractor shall provide its full and timely cooperation with any such inspections, post-payment audits or investigations. Such cooperation shall include, but shall not be limited to, the Contractor's obligation to make available its personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions and to grant to the Fund access to the Contractor's premises at reasonable times and on reasonable conditions in connection with such access to the Contractor's personnel and relevant documentation. The Contractor shall require its agents, including, but not limited to, the Contractor's attorneys, accountants or other advisers, to reasonably cooperate with any inspections, post-payment audits or investigations carried out by the Fund hereunder.

32. PUBLICITY, AND USE OF THE NAME, TRADEMARK OR LOGO

- 32.1 The Contractor shall not advertise or otherwise make public for purposes of commercial advantage or goodwill that it has a contractual relationship with the Fund, nor shall the Contractor, in any manner whatsoever use the name, trademark or logo of the Fund, or any abbreviation of the name of the Fund in connection with its business or otherwise without the written permission of the Fund.

33. RELATIONSHIP BETWEEN THE PARTIES

- 33.1 The Contractor is an independent contractor of the Fund. The Contract shall not create, nor be deemed to create, the relationship of employer and employee or principal and agent between the

Fund and the Contractor or the Contractor's employees, agents or any other persons engaged by the Contractor to perform its obligations under the Contract. Accordingly, neither Party shall be authorized to act in the name or on behalf of, or otherwise bind the other Party, save as expressly permitted by the terms of the Contract.

34. SOURCE OF INSTRUCTION

34.1 The Contractor shall neither seek nor accept instructions from any authority external to the Fund in connection with the performance of its obligations under the Contract. Should any authority external to the Fund seek to impose any instructions concerning or restrictions on the Contractor's performance under the Contract, the Contractor shall promptly notify the Fund and provide all reasonable assistance required by the Fund. The Contractor shall not take any action in respect of the performance of its obligations under the Contract that may adversely affect the interests of the Fund, and the Contractor shall perform its obligations under the Contract with the fullest regard to the interests of the Fund.

35. GOVERNING LAW AND LANGUAGE

35.1 This Contract shall be governed and interpreted according to the laws of the Republic of Korea without regard to its conflict of laws principles, subject to the privileges and immunities accorded to the Fund in the Governing Instrument and the Headquarters Agreement.

35.2 The Contract is in English, which shall be the binding and controlling language on matters relating to the meaning and/or interpretation of the Contract, unless otherwise specified in the Contract. Notices and other correspondences pertaining to the Contract that the Parties may exchange shall likewise be in English.

36. SETTLEMENT OF DISPUTES

36.1 The Fund and the Contractor shall exert every effort to amicably resolve by mutual consultation disputes arising between them in connection with or as a result of the Contract within thirty (30) days of either Party's Notice of the dispute to the other. During this period, the Designated Officer and the Contractor's personnel directly involved should first attempt in good faith to settle the dispute among themselves before escalating the matter to senior Fund management and their respective counterpart/s within the Contractor.

36.2 Should efforts to resolve disputes amicably under the preceding Clause fail, any dispute, controversy or claim arising out or relating to the Contract, including the existence, validity, interpretation or breach thereof or any dispute regarding non-contractual obligations arising out of or relating to it, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with the said Rules in effect on the date of the Contract. The place of arbitration shall be Seoul, South Korea. The language of arbitration shall be English.

36.3 Pending resolution of any such disputes, the Parties shall continue to perform their respective obligations under the Contract or otherwise adopt provisional measures to ensure uninterrupted delivery of the Service.

37. INDEMNIFICATION

37.1 To the fullest extent permitted by law, the Contractor agrees to indemnify and hold harmless the Fund from and against all suits, proceedings, claims, demands, losses and liability of any kind or nature brought by any third party against the Fund, 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 possession of or use by the Fund of any patented device, any copyrighted material, or any other goods, property or services provided or licensed to the

Fund under the terms of the Contract, in whole or in part, separately or in a combination contemplated by the Contractor's published specifications therefor, or otherwise specifically approved by the Contractor, constitutes an infringement of any patent, copyright, trademark, or other intellectual property right of any third party; or

(b) any willful misconduct, action, omission or gross negligence of the Contractor, 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.

37.2 The Fund shall inform the Contractor of any such suits, proceedings, claims, demands, losses and liability within a reasonable period of time after having received actual notice thereof.

37.3 If any material, devices, property, goods or services provided or licensed to the Fund is believed by the Contractor to be likely to infringe a copyright or patent or other intellectual property right, the Contractor shall have the option, at its expense, to (a) modify the material, devices, property, goods or services to be non-infringing; or (b) obtain for the Fund a license to continue using the material, devices, property, goods or services. If it is not commercially reasonable to perform either of the above options, then the Contractor may terminate the license for the infringing material, devices, property, goods or services and refund the fees paid for those material, devices, property, goods or services; provided that this is without prejudice to the remedies that the Fund may be entitled under the Contract or law for such infringement.

37.4 The obligations set out herein shall survive the expiration or termination of the Contract.

38. TRANSFER AND SUBCONTRACTING

38.1 The Contractor shall not assign or transfer the Contract or specific rights or obligations under it without the Fund's prior written consent.

38.2 The Contractor shall obtain the Fund's written consent prior to entering into a subcontract for engaging a subcontractor for the performance of any part of the Services. Where the Fund has consented to subcontracting, copies of each sub-contract shall, at the request of the Fund, be sent by the Contractor to the Fund as soon as reasonably practicable. Notwithstanding the foregoing, the Contractor shall be solely liable to the Fund for the work of the subcontractors.

38.3 The Fund shall be entitled, in its sole discretion, to review the qualifications of any subcontractors and to reject any proposed subcontractor that the Fund reasonably considers is not qualified to perform obligations under the Contract. Any rejection or request for removal of a subcontractor by the Fund shall not, in and of itself, entitle the Contractor to claim any Delays in the performance, or to assert any excuses for the non-performance, of any of its obligations under the Contract.

38.4 To the extent that the Fund has consented to subcontracting of all or part of the Services, the Contractor agrees that the obligations of the Contractor under the following Clauses, as applicable, shall be specifically incorporated into all subcontracts of any tier: (a) Privileges and Immunities; (b) Prohibited Practices; (c) Conflict of Interest; (d) Standard of Service; (e) Confidential Information; (f) Audits and Investigations; and (g) Contractor's Undertaking. For purposes of this Contract the term "subcontract" shall mean any agreement by the Contractor with any Contractor-Related Persons to perform a portion of the Services, as well as any agreements between a subcontractor and its lower tier contractors, vendors, suppliers, consultants, or other entities or persons.

39. ENTIRETY AND SEPARABILITY

39.1 The Contract supersedes all prior written or verbal agreements between the Fund and the Contractor and contains the reciprocal obligations of the Parties pertaining to or arising out of the

delivery of the Service. However, this shall not excuse any Party from liability arising from fraud or fraudulent misrepresentation.

- 39.2 Should any Clause, subparagraph or part of the Contract be held by an arbitration court to be invalid, unenforceable, or void, the decision shall not affect the validity of the entire Contract or of those parts that are not so declared or otherwise remain capable of partial or separable performance.

40. WAIVER

- 40.1 The failure of either Party to insist upon strict performance of any provision of the Contract; or the failure of either Party to exercise, or any Delay in exercising, any right or remedy under the Contract shall not constitute a waiver of that right or remedy nor diminish the obligations established by the Contract.
- 40.2 A waiver of any right or remedy arising from a breach of the Contract shall not constitute a waiver of any right or remedy arising from any other or subsequent breach of the Contract.

41. RIGHTS OF THIRD PARTIES

- 41.1 This Contract is intended solely for the benefit of the Parties and is not intended to be for the benefit of, nor may any provision be enforced by, any person or entity that is not a Party to this Contract. Any other statute or law to the contrary is hereby excluded or disappplied.

42. COUNTERPART

- 42.1 The contract may be executed in counterparts, each of which when executed and delivered shall constitute an original, but all counterparts together shall constitute one and the same instrument.