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European Union
Humanitarian Aid



**REQUEST FOR QUOTATION (RFQ)
AND
GENERAL INSTRUCTION TO CONTRACTORS (GIC)**

To : Whom it may concern
 Project: “Multi-sectoral assistance to and protection of migrants and refugees stranded in Greece”
 Ref. No.: 328214
 Date : 24/05/2017

In the framework of the “Multi-sectoral assistance to and protection of migrants and refugees stranded in Greece” project, co-funded by the International Organization for Migration Greece, the implementing partner “The Smile of the Child” invites interested eligible Contractors to submit Quotations for the implementation of the second phase of building rehabilitation works for a house and a small building in the region of Lesbos.

Item No.	Item Description	Quantity	Unit
1	Repair of the indoor walls made of lath and plaster	90	m ²
2	Repair of sporadic roughcast where there is detriment	200	m ²
3	Italian tiles for the floor of the ground floor of the house	143	m ²
4	Repair of the wooden floors in the first floor of the house	85	m ²
5	Repair of the ceilings of the first floor of the house	151	m ²
6	Italian tiles in the floor and the walls (until the height of the door) in the WCs	55	m ²
7	Kitchen cabinets	12	m ²
8	Kitchen equipment	1	Basin
		1	Counter
		1	Battery
9	Replacement of external chambranles		
	- Main building	42	m ²
	- Small building	9	m ²

10	Painting of wooden surfaces		
	- Main building	270	m ²
	- Small building	33	m ²
11	Painting of walls (outside 324 m ² , inside 280 m ² on the ground floor and 323 m ² on the first floor) (main building)	927	m ²
12	Stonework	180	m ²
13	WC equipment	4	Toilet
		4	Bathroom sinks
		4	Showers
14	Bedroom closets	25	m ²
15	Conformation of the surrounding area	23	m ²
16	Fences and repair of retaining walls	N/A	Cost of materials and daily wages
17	Repair of the main entrance staircase	N/A	Cost of materials and daily wages
18	Painting of railings (main building)	29,7	m ²
19	Painting of a pergola (small building)	30	m ²

With this RFQ is the GIC which includes Instructions to Contractors, Technical Specifications and administrative requirements that Contractors will need to follow in order to prepare and submit their quotation for consideration by 'The Smile of the Child'.

'The Smile of the Child' reserves the right to accept or reject any quotations, and to cancel the procurement process and reject all quotations at any time prior to award of Purchase Order or Contract, without thereby incurring any liability to the affected Contractor/s or any obligation to inform the affected Contractor/s of the ground for the 'The Smile of the Child's' action.

The Contractors who want to submit a Quotation, within the framework of the present Request for Quotations, have the right to submit their Quotation and/or required supporting documents in Greek or in English.

Very truly yours,



Konstantinos Giannopoulos
President of the Board

'The Smile of the Child' is encouraging companies to use recycled materials or materials coming from sustainable resources or produced using a technology that has lower ecological footprints.

GENERAL INSTRUCTION TO CONTRACTORS (GIC)

1. Description of Works

‘The Smile of the Child’ requests from prospective Contractors to submit quotation for the implementation of the second phase of the building rehabilitation works for one house and one small building in the region of Lesvos.

2. Corrupt, Fraudulent and Coercive Practices

‘The Smile of the Child’ requires that all TSOC Staff, contractors, manufacturers, suppliers or distributors, observe the highest stand of ethics during the procurement and execution of all contracts. TSOC shall reject any proposal put forward by contractors, or where applicable terminate their contract, if it is determined that they have engaged in corrupt, fraudulent, collusive or coercive practices. In pursuance of this policy, TSOC defines for purposes of this paragraph the terms set forth below as follows:

- Corrupt practice means the offering, giving, receiving or soliciting, directly or indirectly, of any thing of value to influence the action of the Procuring/Contracting Entity in the procurement process or in contract execution;
- Fraudulent practice is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, the Procuring/Contracting Entity in the procurement process or the execution of a contract, to obtain a financial gain or other benefit to avoid an obligation;
- Collusive practice is an undisclosed arrangement between two or more contractors designed to artificially alter the results of the tender procedure to obtain a financial gain or other benefit;
- Coercive practice is impairing or harming, or threatening to impair or harm, directly or indirectly, any participant in the tender process to influence improperly its activities in a procurement process, or affect the execution of a contract

3. Conflict of Interest

A contractor found to have a conflicting interest to another contractor or in relation with the Procurement Entity shall be disqualified from participating in a tender. A contractor may be considered to have conflicting interest under any of the circumstances set forth below:

- A Contractor has controlling shareholders in common with another contractor;
- A Contractor receives or has received any direct or indirect subsidy from another Contractor;

- A Contractor has the same representative as that of another Contractor for purpose of this quotation;
- A Contractor has a relationship, directly or through their parties, that puts them in a position to have access to information about or influence on the Quotation of another or influence the decision of the Mission/procuring Entity regarding this Quotation process;
- A Contractor who participated as a consultant in the preparation of the design or technical specifications of the Goods and related services that are subject of the quotation.

4. Eligible Contractor

Only Contractors that are determined eligible shall be considered for award. The Contractor shall fill up and submit the standard Vendor Information Sheet (VIS) (Annex C) to establish the Contractor's eligibility together with the Quotation. To qualify for award of the Contract, bidders shall meet the following minimum qualifying criteria

- (a) annual volume of construction work of at least 150.000,00€ in the last three years;
- (b) experience as prime contractor in the construction of at least 1 work of a nature and complexity equivalent to the Works over the last 3 years, to comply with this requirement, cost of works cited should be at least equivalent to 100% of the estimated project cost and should be at least 70 percent complete;
- (c) proposals for the timely acquisition (own, lease, hire, etc.) of the essential equipment listed in the Qualification Information;
- (d) a Contract Manager with 10 years' experience in works of an equivalent nature and volume, including no less than three years as Manager.

5. Cost of Quotation Preparation

The Contractor shall bear all costs associated with the preparation and submission of his Quotation and TSOC will not in any case be responsible and liable for the cost incurred.

6. Errors, omissions, inaccuracies, variations and clarification in the Quotation Documents

The documents and forms requested for the purpose of soliciting Quotations shall form part of the Contract; hence care should be taken in completing these documents.

Contractors shall not be entitled to base any claims on errors, omissions, or inaccuracies made in the Quotation Documents. Contractors requiring any clarifications on the content of this document may notify the TSOC in writing at the following address.

The Smile of the Child
7 Neof. Vamva str., 106 74 Athens
Tel: +30 210 3606050
Fax: +30 210 3606051

TSOC will respond to any request for clarification received on or before Monday 29th of May 2017, 14:00. Copies of the response including description of the clarification will be given to all Contractors who received this General Instruction, without identifying the source of the inquiry.

7. Confidentiality and Non-Disclosure

All information given in writing to or verbally shared with the Contractor in connection with this General Instruction is to be treated as strictly confidential. The Contractor shall not share or invoke such information to any third party without the prior written approval of TSOC. This obligation shall continue after the procurement process has been completed whether or not the Contractor is successful.

8. TSOC's Right to Accept any Quotation and to Reject any and all Quotations

TSOC reserves the right to accept or reject any Quotation, and to cancel the procurement process and reject all quotations submitted, at any time prior to award of contract, with out thereby incurring any liability to the affected Contractor or Contractors or any obligation to inform the affected Contractor or Contractors of the ground for the TSOC's action.

9. Requirements

9.1 Quotation Documents

The following shall constitute the Quotation Documents to be submitted by the Contractors:

- 1.) Quotation Form (Annex A)
- 2.) Bill of Quantities Form (Annex B)
- 3.) Vendor Information Sheet Form (Annex C)
- 4.) Construction Schedule Form (Annex D)
- 5.) Key Supervisory Staff Schedule Form (Annex E)
- 6.) Equipment Schedule Form (Annex F)
- 7.) Plans and Specifications (Annex G)
- 8.) Pro forma Contract ¹(Annex H)

Contractors are required to use the forms provided as Annexes in this document.

9.2 Quotation Form

¹ If applicable. In lieu of P.O.

The Quotation Form (Annex A) and other required documents shall be duly signed and accomplished and typewritten or written in indelible ink. Any correction made to the prices, rates or to any other information shall be rewritten in indelible ink and initialed by the person signing the Quotation Form.

The language of the Quotations shall be in Greek or in English and prices shall be quoted in Euros, inclusive of VAT.

Prices quoted by the Contractor shall be fixed during the Contractor's performance of the contract and shall not be subjected to price escalation and variation on any account, unless otherwise approved by TSOC. A submitted Quotation with an adjustable price quotation will be treated as non-responsive and will be rejected.

9.3 Validity of Quotation Price

Quotation shall remain valid for 30 calendar days after the deadline for quotation submission.

In exceptional circumstances, prior to expiry of the period of validity of quotations, TSOC may request that the contractors extend the period of validity for a specified additional period. The request and the response thereto shall be made in writing. A contractor agreeing to the request will not be required or permitted to modify its quotation.

9.4 Documents Establishing Contractor's Eligibility and Qualification

The Contractor shall furnish, as part of its quotation, documents establishing the Contractor's eligibility to submit quotation and its qualifications to perform the contract if its quotation is accepted. The standard Vendors Information Sheet shall be used for this purpose (Annex C). The documentary evidence of the Contractor's qualifications to perform the contract if its quotation is accepted shall be established to TSOC's satisfaction:

- (a) that the Contractor has the financial and technical capacity and track record necessary to perform the contract;
- (b) that the Contractor meets other qualification criteria.

10. Submission of Quotations

Quotation must be submitted in a sealed envelope. The Contractor must seal the "Original" and "Copy" of the Quotation Documents as stated in item 9.1 (Quotation Documents) and shall be addressed to

The Smile of the Child
Ms. Annika Drandaki
7 Neof. Vamva str., 106 74 Athens
Tel: +30 210 3606050
Fax: +30 210 3606051

Quotation shall be submitted by courier or hand delivery to the above address on or before Tuesday 30th of May 2017, 17:00. Late² Quotations will not be accepted.

11. Opening of Quotations

At the indicated time and place, the opening of Quotations shall be carried out by TSOC in the presence of the Contractors who wish to attend. TSOC reserve the right to conduct opening of Quotations in public or not.

12. Acceptance of Quotations

TSOC is not bound to take an immediate decision on the acceptability or unacceptability of Quotations at the time of their opening.

13. Rejection of Quotations

Quotation can be rejected for the following reasons:

- (a) the Quotation is not presented in accordance with this General Instruction;
- (b) the Quotation Form or any document which is part of the Quotation Document is not signed;
- (c) the Contractor is currently under list of blacklisted Contractors;
- (d) the Contractor offer imposes certain basic conditions unacceptable to TSOC

TSOC is not bound to accept any offer received and reserves the right to waive any minor defect in an offer, provided, however, that such minor defect (i) does not modify the substance of the offer and (ii) does not change the relative ranking of the Contractors.

14. Evaluation of Quotations

TSOC shall evaluate and compare the Quotations on the basis of the following:

- (a) Completeness and responsiveness of the documents mentioned in 9.1
- (b) Contractors technical and financial capacity to perform the Contract
- (c) Compliance with construction schedule and viable methodology offered.
- (d) Compliance with technical specifications.
- (e) Contractors availability and capacity of equipments;
- (f) Price

Arithmetical errors will be corrected on the following basis. If there is a discrepancy between the unit price and the total price that is obtained by multiplying the unit price and quantity, the unit price shall prevail, and the total price shall be corrected. If the

² Quotation delivered beyond the prescribed date and time shall be considered late, the envelope shall be immediately returned to the Contractor unopened. The date and time of submission of the quotation shall be recorded. A quotation submission log shall be prepared for the purpose.

Contractor does not accept the correction of the errors, its Quotation will be rejected. If there is a discrepancy between words and figures, the amount in words will prevail.

15. Post Qualification

Prior to award, post-qualification will be carried out by TSOC to further determine the selected Contractor's technical and financial capability to perform the contract. TSOC shall verify and validate any documents/information submitted and shall conduct ocular inspection³ of the office, plant and equipment and previous projects.

16. Award of Contract

The Contractor that has submitted the lowest evaluated Price, substantially responsive to the requirements of this General Instruction and who has been determined to be qualified to perform the contract shall be selected and awarded the contract.

TSOC shall notify the selected Contractor through a Notice of Award. TSOC shall also notify in writing, the other Contractors who were not selected without disclosing the reason for rejection.

17. Delivery Site and Period of Delivery

The works shall be done in the area of Akrotiri, Taxiarches in the island of Lesvos.

The Works must be completed within 20 calendar days after two calendar days upon receipt of the Notice to Proceed (NTP).

18. Liquidated Damages

If the Contractor fails to deliver the works within the completion period specified in Clause 17 above, a penalty payment of 0.1% of the cost of unfinished Works for every day of breach of completion schedule will be requested.

19. Payment

Payment shall be made only upon TSOC's acceptance of the Works, and upon TSOC's receipt of invoice.⁴

TSOC may grant an advance payment equivalent to maximum of 10% of the Contract amount upon submission of a claim and a bank guarantee for the equivalent amount valid until the Works are delivered and in the form provided in Annex J. The bank guarantee may be waived if the advanced amount is less than USD Ten Thousand Dollars (USD10,000).

³ If applicable.

⁴ Insert conditions if progress payment is allowed.

20. Retention Money

There will be retention of 10% of each payment, as security for the quality of workmanship, conformance with plans and specifications, and third party liabilities. Notwithstanding the provisions of the Contract, the 10% retention shall be released after the Contractor has complied with the requirements of the Certificate of Final Acceptance and the warranty period.

The Contractor has the option to substitute the cash retained with an acceptable Bank Guarantee of prescribed form in the same amount (Annex K).

21. Settlement of Dispute

As the activity is funded by the European Commission (ECHO) through IOM, the settlement of dispute, controversy or claim that may arise in relation to the procurement process is subject to the United Nations Commission on International Trade Law (UNCITRAL) arbitration.

QUOTATION FORM

Date : _____

To : _____

Having examined the General Instruction for the Construction of the second phase of the building rehabilitation works for one house and one small building in the region of Lesvos, the receipt of which is hereby duly acknowledge, I, representing *[name of company]*. offer to execute the requested works in conformity with the General Instruction for the total Lump Sum amount of *[total bid amount in words and figures and currencies]* in accordance with the Priced Bill of Quantities which is herewith attached and form part of this Quotation.

I undertake if my offer is accepted, to deliver the Works in accordance with the Bill of Quantities, delivery schedule, plans and specifications.

I agree to abide by this Quotation for the Validity Period specified in the General Instruction which may be accepted at any time before the expiration of that period.

Until a formal contract is prepared and executed, this Quotation Form, together with your Notice of Award shall constitute a binding agreement between us.

I hereby certify that this Quotation complies with the requirements stipulated in the General Instruction.

Dated this _____ day of _____ 20__.

[signature over printed name] *[in the capacity of]*

Duly authorized to sign Quotation for and on behalf of
_____ *[name of company]*

Annex B

BILL OF QUANTITIES FORM

PROJECT TITLE : “Multi-sectoral assistance to and protection of migrants and refugees stranded in Greece”

LOCATION : Lesvos

ITEM NO.	ITEM DESCRIPTION	QUANTITY	UNIT	UNIT PRICE	TOTAL PRICE
1	Repair of the indoor walls made of lath and plaster	90	m ²		
2	Repair of sporadic roughcast where there is detriment	200	m ²		
3	Italian tiles for the floor of the ground floor of the house	143	m ²		
4	Repair of the wooden floors in the first floor of the house	85	m ²		
5	Repair of the ceilings of the first floor of the house	151	m ²		
6	Italian tiles in the floor and the walls (until the height of the door) in the WCs	55	m ²		
7	Kitchen cabinets	12	m ²		
8	Kitchen equipment	1	Basin		
		1	Counter		
		1	Battery		
9	Replacement of external chambranles				
	- Main building	42	m ²		
	- Small building	9	m ²		
10	Painting of wooden surfaces				
	- Main building	270	m ²		
	- Small building	33	m ²		
11	Painting of walls (outside 324 m ² , inside 280 m ² on the ground floor and 323 m ² on the first floor) (main building)	927	m ²		

12	Stonework	180	m ²		
13	WC equipment	4	Toilet		
		4	Bathroom sinks		
		4	Showers		
14	Bedroom closets	25	m ²		
15	Conformation of the surrounding area	23	m ²		
16	Fences and repair of retaining walls	N/A	Cost of materials and daily wages		
17	Repair of the main entrance staircase	N/A	Cost of materials and daily wages		
18	Painting of railings (main building)	29,7	m ²		
19	Painting of a pergola (small building)	30	m ²		
GRAND TOTAL					

Contractors authorized signature over printed name

VENDOR INFORMATION SHEET (VIS)

Name of the Company _____

Address Leased Owned Area: _____sqm

House No _____

Street Name _____

Postal Code _____

City _____

Region _____

Country _____

Contact Numbers/Address

Telephone Nos. _____ Contact Person: _____

Fax No. _____

E mail Address _____ Website: _____

Location of Plant/Warehouse Leased Owned Area: _____sqm

Business Organization Corporation Partnership Sole Proprietorship

Business License No.: _____ Place/Date Issued: _____ Expiry Date _____

No. of Personnel _____ Regular _____ Contractual/Casual _____

Nature of Business/Trade

 Manufacturer Authorized Dealer Information Services Wholesaler Retailer Computer Hardware Trader Importer Service Bureau Site Development/
Construction Consultancy Others _____

Number of Years in business: _____

Complete Products & Services

Payment Details

Payment Method Cash Check Bank Transfer Others

Currency Loc.Currency USD EUR Others

Terms of Payment 30 days 15 days 7 days upon receipt of invoice

Advance Payment Yes No % of the Total PO/Contract

Bank Details:

Bank Name _____

Bldg and Street _____

City _____

Country _____

Postal Code _____

Country _____

Bank Account Name _____

Bank Account No. _____

Swift Code _____

Iban Number _____

Key Personnel & Contacts (Authorized to sign and accept PO/Contracts & other commercial documents)

Name	Title/Position	Signature
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Companies with whom you have been dealing for the past two years with approximate value in Euros:

Company Name	Business Value	Contact Person/Tel. No.
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Have you ever provided products and/or services to any mission/office of TSOC?

Yes

No

If yes, list the department and name of the personnel to whom you provided such goods and/or services.

Name of Person	Mission/Office	Items Purchased
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Do you have any relative who worked with us at one time or another, or are presently employed with TSOC? If yes, kindly state name and relationship.

_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Trade Reference

Company	Contact Person	Contact Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Banking Reference

Bank	Contact Person	Contact Number
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

REQUIREMENTS CHECK LIST

Please submit the following documents together with the Information Sheet:

No	Document	For TSOC use only	
		Submitted	Not Applicable
1	Company Profile (including the names of owners, key officers, technical personnel)		
2	Company's Articles of Incorporation, Partnership or Corporation, whichever is applicable, including amendments thereto, if any.		
3	Certificate of Registration from host country's Security & Exchange Commission or similar government agency/department/ministry		
4	Valid Government Permits/Licenses		
5	Audited Financial Statements for the last 3 years*		
6	Certificates from the Principals (e.g. Manufacturer's Authorization, Certificate of Exclusive Distributorship, Any certificate for the purpose, indicating name, complete address and contact details)		
7	Catalogues/Brochures		
8	List of Plants/Warehouse/Service Facilities		
9	List of Offices/Distribution Centers/Service Centers		
10	Quality and Safety Standard Document / ISO 9001		
11	List of all contracts entered into for the last 3 years (indicate whether completed or ongoing) *		
12	Certification that Non-performance of contract did not occur within the last 3 years prior to application for evaluation based on all information on fully settled disputes or litigation		
13	For Construction Projects: List of machines & equipment (<i>include brand, capacity and indication if the equipment are owned or leased by the Contractor</i>)		

I hereby certify that the information above is true and correct. I am also authorizing TSOC to validate all claims with concerned authorities.

Received by:

Signature

Signature

Printed Name

Printed Name

Position/Title

Position/Title

Date

Date

FOR TSOC USE ONLY

Purchasing Organization _____
Account Group _____

Industry 001 002 003

where 001 - Transportation related to movement of migrants
002 - Goods (e.g. supplies, materials, tools)
003 - Services (e.g. professional services, consultancy, maintenance)

Vendor Type Global Local

CONSTRUCTION SCHEDULE

Duration in Weeks

Act. No.	Activity Name	1	2	3
1	Repair of the indoor walls made of lath and plaster			
2	Repair of sporadic roughcast where there is detriment			
3	Italian tiles for the floor of the ground floor of the house			
4	Repair of the wooden floors in the first floor of the house			
5	Repair of the ceilings of the first floor of the house			
6	Italian tiles in the floor and the walls (until the height of the door) in the WCs			
7	Kitchen cabinets			
8	Kitchen equipment			
9	Replacement of external chambranles			
	- Main building			
	- Small building			
10	Painting of wooden surfaces			
	- Main building			
	- Small building			
11	Painting of walls (outside 324 m ² , inside 280 m ² on the ground floor and 323 m ² on the first floor) (main building)			
12	Stonework			
13	WC equipment			
14	Bedroom closets			
15	Conformation of the surrounding area			
16	Fences and repair of retaining walls			
17	Repair of the main entrance staircase			
18	Painting of railings (main building)			
19	Painting of a pergola (small building)			
Manpower Allocation & Descriptions				
Equipment Allocation & Descriptions				

The Contractor may use extra pages to furnish additional information or may use other acceptable format to illustrate the construction schedule.

Contractors authorized signature over printed name

KEY SUPERVISORY STAFF SCHEDULE
(to be assigned for the proposed project)

Name	Position	Yrs. w/ the Firm	Qualificatio n	Largest Cost of Project Handled	Years of Experienced On said Position
1					
2					
3					
4					
5					
6					
7					
8					
9					
10					

Attached CV if not yet attached at the eligibility documents submitted.

We hereby certify that the above key supervisory staff is available for use in the execution of the contract.

 Contractors authorized signature over printed name

EQUIPMENT SCHEDULE
(to be used for the proposed project)

Type/description	Capacity	Age	Condition/Location
1			
2			
3			
4			
5			
6			
7			
8			
9			
10			
11			

Indicate if it is owned or to be leased.

We hereby certify that the above plant and equipment are available for use in the execution of the contract.

Contractors authorized signature over printed name

PLANS AND SPECIFICATIONS

[Insert here copy of Plans and Specifications or can be issued on separate volume]

Attached.

Ref. No.:	
Project Code:	
LEG Approval Code / Checklist Code	

CONSTRUCTION AGREEMENT

Between
The Smile of the Child
And
[Name of the Contractor]

This Construction Agreement is entered into between ‘**The Smile of the Child**’, *[Address]*, represented by *[Name, Title]* (hereinafter referred to as “**TSOC**”), and *[name of company]* of *[address]*, in *[country]*, represented by *[Name, Title of the representative of the Contractor]*, (hereinafter referred to as the “**Contractor**”). TSOC and the Contractor are also referred to individually as a “**Party**” and collectively as the “**Parties**.”

1. Introduction and Integral Documents

- 1.1 TSOC intends to engage the services of *[company's name]* for the construction of *[name of project and project code/ WBS Element]* located at *[address]* (the “**Works**”). The Works are what this Agreement requires the Contractor to construct, install and turn over to TSOC, as defined in the plans, specifications and BoQ).
- 1.2 The following documents form part of this Agreement and are attached as Annexes: *[add/delete as necessary]*
- (a) **Annex A** - Detailed Instruction to Bidders dated *[insert date]*, with annexed Scope of Work, Technical Specifications, Drawings, and General Conditions of Tender;
 - (b) **Annex B** - Bid Form including Contractor's firm and final proposal/bid dated *[insert date]*, with detailed Bill of Quantities (“**BoQ**”) and unit cost;
 - (c) **Annex C** - Approved Work Schedule;
 - (d) **Annex D** - Accepted Notice of Award (“**NoA**”); and
 - (e) **Annex E** - Payment Schedule.
- 1.3 Any other Project documentation, agreed and signed by both Parties during the implementation of this Agreement, shall form part of this Agreement.

- 1.4 All correspondence, instructions, notes and other communications relating in any way to the performance of this Agreement will be in the English language. The English language version of the Agreement will at all times be the version of the Agreement which binds the Parties. Translations of the Agreement into languages other than English may be prepared for working purposes but will have no legally binding effect on the Parties.
- 1.5 If either Party finds any discrepancy or ambiguity in this Agreement, that Party must notify the other Party in writing. The Parties agree to consult with each other to attempt to resolve the discrepancy or ambiguity.
- 1.6 Unless otherwise advised by TSOC in writing, all Project reports and other issues arising under this Agreement shall be addressed to TSOC's authorized Agreement signatory.

2. Scope of Work

- 2.1 The Contractor shall furnish all the necessary materials, tools and equipment, labor, supervision, and other services, for the satisfactory and timely completion of the Works in accordance with this Agreement .
- 2.2 Only TSOC may approve any changes, modifications, deviations, and substitutions, in the Scope of Work in accordance with Article 7 (“**Work Variation**”).
- 2.3 TSOC reserves the right to supply any materials, equipment, or resources, and to delete or reduce any work item, whether in whole or in part and update Annexes as necessary and a reduced Contract Price shall be agreed.

3. Contract Price

- 3.1 The total contract price (the “**Contract Price**”) shall be *[currency code] [insert figure] (insert amount of money in words + currency in words)* only inclusive of all applicable fees, taxes and permits that may be imposed by any Government entity in connection with the execution, completion, and turnover of the Works pursuant to this Agreement .
- 3.2 The Contract Price and unit prices as outlined in Annex B shall be binding and shall not be altered in any event. The Contract Price will be modified only in cases of TSOC - approved Work Variations and TSOC -supplied materials as outlined in Articles 2.2 and 2.3 of this Agreement and shall be reflected in writing.
- 3.3 The liability of TSOC to the Contractor is **STRICTLY LIMITED** to the Contract Price outlined in Article 3.1, regardless of any increase in wage or labor cost or fluctuation in the cost of materials and equipment, occurring at any time. The Contractor shall be liable for its under-estimation of the requirements of this Agreement, inflation or currency devaluation, if any.

4. Manner of Payment

- 4.1 Payments for the Works will be done in installments in accordance with the Payment Schedule in Annex E.
- 4.2 The Contractor's Progress Claims shall be submitted to and certified by TSOC's appointed Project Manager who will verify the value of the work done with regard to the value of the quantities of items completed in the Bill of Quantities. The Contractor shall submit all Progress Claims with the following attachments:
 - (a) Updated Financial Statement of the Project;
 - (b) Statement of Completed Works;
 - (c) Progress Photos; and
 - (d) Contractor's Sales Invoice.
- 4.3 Within 7 (seven) calendar days of Contractor's submission of the Progress Claims and Statement of Completed Works and all required attachments to the Project Manager. The Project Manager shall evaluate the said Progress Claim(s). Evaluated and approved Progress Claims shall be due and payable within 10 (ten) working days from date of approval of Progress Claim. During this period of evaluation and processing of payments, the Contractor shall continue progress of the work in accordance with the Approved Work Schedule.
- 4.4 Any progress payment/s made by TSOC does not imply nor signify acceptance of any portion of the accomplished work and does not waive TSOC's right to enforce the Contractor's warranty as provided in Article 14.2 of this Agreement, nor to enforce penalties for delay.
- 4.5 The Contractor can only submit the final Progress Claim as per the Payment Schedule when the Contractor has satisfactorily completed and submitted:
 - (a) All works, including Work Variation Orders, as stipulated in the annexed documents;
 - (b) Rectification of all reported non-conforming works;
 - (c) Completed demobilization and clean-up of site;
 - (d) Applicable materials and work test certificate/s;
 - (e) Approval duly signed by the Project Manager and by the Contractor's authorized representative that the Work is completed in accordance with drawings and specifications and in compliance with applicable laws, rules and regulations of the local and/or national government of the location where the Project is to be implemented;
- 4.6 A Certificate of Provisional Acceptance of completed Works shall be issued by TSOC when each of the requirements under Article 4.5 have been fulfilled to its satisfaction.
- 4.7 A Certificate of Provisional Acceptance of terminated Works shall be issued by TSOC if TSOC terminates the contract in accordance with Article 25. This Certificate will indicate the Completion Rate as per Article 6.2 and the Contractor shall remain

responsible for the rectification of non-conforming or defective portions of the Works in accordance with Article 14.2.

- 4.8 A Certificate of Final Acceptance shall be issued by TSOC 12 (twelve) months after the date a Certificate of Provisional Acceptance of the completed or terminated Works is issued provided that any works required during the warranty period have been completed to its satisfaction.

5. Completion Period

- 5.1 The Contractor shall mobilize all necessary and appropriate resources and coordinate all work activities with TSOC to ensure commencement of the Works on *[date]* and completion and turn-over of the Works to TSOC by *[date]* (“**Completion Date**”).
- 5.2 Where the Contractor is unable to complete the Works by the date specified in Article 5.1, the Contractor may request a time extension in writing explaining the reasons for the delay.
- 5.3 TSOC shall not approve requests for time extension for reasons such as but not limited to:
- (a) Project location, conditions and restrictions identified during time of tender and award of the Agreement ;
 - (b) Normal weather and climatic conditions prevailing at the site location;
 - (c) Logistics, implementation, coordination problems and other reasons within the control of the Contractor;
 - (d) Financial, operational and labor difficulties of the Contractor or any of its sub-Contractor/s or supplier/s;
 - (e) Any required rectification of non-conforming work items; and
 - (f) Nature and condition of terrain.
- 5.4 TSOC may revise the Completion Date as stated in Article 5.1 in response to the Contractor’s request for time extension caused by any of the following:
- (a) Force Majeure as described in Article 16;
 - (b) Approved Work Variation Order/s requiring additional time for completion by the Contractor, as agreed between the Parties;
 - (c) TSOC’s failure to make timely payments for the Works completed to TSOC’s satisfaction;

Provided, the requested extension shall not exceed the duration of the work stoppage or delay caused by the foregoing.

- 5.5 If the Works are not completed by the Completion Date specified in Article 5.1 the Contractor shall be liable to TSOC for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day of delay until the whole Works are completed and accepted by TSOC according to Article 4.6. TSOC may, at its

discretion, grant a conditional time extension whereby the Works are not considered to be in delay during the time extended, but in case of non-completion within the extended period, the calculation of liquidated damages for delay outlined herein shall be from the original completion date before extension. If the Agreement is terminated by either Party after the Completion Date due to non-completion of the Works, the Contractor shall be liable to TSOC for liquidated damages equivalent to 0.1% (one-tenth of one per cent) of the total Contract Price for each day from the Completion Date to the date of termination.

6. Work Schedule

- 6.1 Within the timeframe specified in the NoA and no later than the date of signature of this Agreement, the Contractor shall submit to TSOC a work schedule (the “**Work Schedule**”) showing the order and timing for all the activities in the Works.
- 6.2 The Contractor shall keep and update a daily logbook on all progress and matters relating to the Works in accordance with industry standards. The logbook shall be inspected and verified for accuracy, daily or at an interval designated by TSOC, by a designated TSOC staff or its authorized representatives. The logbook shall be the authoritative source of information for determining the extent of the Works completed (the “**Completion Rate**”). In case the Contractor fails to update the logbook properly with the required verification, TSOC shall have the right to solely determine the Completion Rate which cannot be challenged by the Contractor.
- 6.3 The Contractor shall submit an updated Work Schedule as and when requested by TSOC or its Project Manager.
- 6.4 The Contractor shall notify TSOC through its Project Manager of any proposed change in the Work Schedule. Any change shall be subject to prior written approval by TSOC. The Contractor shall also submit to the Project Manager for approval a revised schedule within 7 (seven) calendar days from the date of proposing the change.
- 6.5 If at any time TSOC deems that Contractor’s actual progress is inadequate to meet the requirements of this Agreement, TSOC may notify the Contractor to take such steps as may be necessary to improve its progress. If after a reasonable period, as determined by TSOC, the Contractor still does not improve its performance, TSOC may require an increase in Contractor’s labour force, the number of shifts, workdays per week, overtime hours, amount of equipment, or require expedited shipment of equipment and materials, all at the Contractor’s cost and without additional cost to TSOC.
- 6.6 If at any time the Contractor’s labour force is inactive due to unpaid wages, the Contractor shall be liable to TSOC for liquidated damages equivalent to 0.1% (one-tenth of one percent) of the total Contract Price for each day of work stoppage until the

entire labour force resumes work on the Project. This penalty shall be applied independently of any other sanction or penalty allowed for in this Agreement.

7. **Work Variation**

- 7.1 At any time during the implementation and execution of this Project, TSOC reserves the right to request any alteration in any aspect of the work, as deemed necessary or appropriate by TSOC in the best interest of the Project.
- 7.2 Alterations and/or modifications, whether additive or deductive, shall be conveyed to the Contractor in the form of a work variation order (the “**Work Variation Order**”) duly approved and signed by TSOC or its authorized representative. The Contractor shall immediately implement any Work Variation Order issued by TSOC.
- 7.3 All variations shall be included in an updated Work Schedule.
- 7.4 If any work in the Work Variation Order corresponds with an item description in the BoQ, the rate in the BoQ shall be used to calculate the value of the variation. In other cases, the cost of such Work Variation Order shall be evaluated and compensated as agreed between the Parties. TSOC may request the Contractor to provide a quotation for the cost of the variation.

8. **Bank Guarantee for Advance Payment** *(if applicable)*

- 8.1 The Contractor shall, within the timeframe specified in the NoA and no later than the date of signature of this Agreement, furnish TSOC with an unconditional bank guarantee in the amount equivalent to *[percentage]* of the Contract Price (the “**Bank Guarantee**”).
- 8.2 The Bank Guarantee shall be in a form and by a bank acceptable to TSOC in an amount and currency equal to the advance payment.
- 8.3 The amount of the Bank Guarantee shall not be construed as the limit of the Contractor’s liability to TSOC in any event.
- 8.4 The Bank Guarantee shall be effective from the date of the release of cash advance as per Article 4.1 of this Agreement until the date of the provisional acceptance as per Articles 4.6 or 4.7.

9. **Performance Security** *(applicable where the contract price is over USD 250,000)*

- 9.1 The Contractor shall, within the timeframe specified in the NoA, furnish TSOC with a performance bond in the amount equivalent to 10% (ten percent) of the Contract Price, to be issued by a reputable bank or surety company in a form acceptable to TSOC (the “**Performance Bond**”).
- 9.2 The Performance Bond shall serve as the guarantee for the Contractor’s faithful performance and compliance with the terms and conditions of this Agreement.
- 9.3 The amount of the Performance Bond shall not be construed as the limit of the Contractor’s liability to TSOC in any event.
- 9.4 The Performance Bond shall be effective from the date of commencement of the Works until the date of Provisional Acceptance as per Articles 4.6 or 4.7.

10. Retention

10.1 Upon issuance of the Certificate of Provisional Acceptance for completed Works as per Article 4.6, an amount equivalent to 10% (ten per cent) of the Contract Price shall be retained by TSOC to be used for repairs or reconstruction of defective works due to poor workmanship and/or inferior quality of material used which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.

10.2 In case a Certificate of Provisional Acceptance for terminated Works has been issued as per Article 4.7, an amount equivalent to 10% (ten per cent) of the Contract Price corresponding to the Completion Rate as per Article 6.2 shall be retained by TSOC to use for repairs and reconstruction of defective works due to poor workmanship and/or inferior quality of material used for which the Contractor was responsible under this Agreement which are discovered within a period of 12 (twelve) months from the date of Provisional Acceptance.

10.3 The Contractor may, from the date of Provisional Acceptance and until the expiration of Retention period, request TSOC to release the amount retained as per Article 10.1 or Article 10.2 by submitting an unconditional bank guarantee. Such bank guarantee shall be in a form and by a bank acceptable to TSOC and in an amount and currency equal to the amount retained and effective until the expiration of Retention period.

11. Contractor’s Responsibility

11.1 All government permits and licenses required for the execution of the Works under this Agreement shall be obtained prior to the commencement of the Works and paid for by the Contractor.

- 11.2 The Contractor shall comply with local and national building regulations imposed by appropriate government agencies, and shall keep TSOC indemnified against all fines, penalties and losses incurred by reason of any breach of this clause.
- 11.3 The Contractor shall assume full responsibility for the Works under this Agreement until its final acceptance by TSOC as per Article 4.8. The Contractor shall have entire control and supervision of the Works and services herein agreed upon and shall be solely liable for the salaries, wages and other employment benefits of all employees and sub-contractors. Should the Contractor breach this clause, TSOC has the right to proceed against the Performance Bond or Bank Guarantee or to use the Retention Amount, without prejudice to demanding direct reimbursement from the Contractor in the event that the amount of the Performance Bond Bank Guarantee or Retention Amount is insufficient.
- 11.4 The Contractor shall be responsible for the safety of all activities on the site and for ensuring that relevant occupational health and safety laws and regulations are followed.
- 11.5 The Contractor shall be solely and fully accountable for ANY claim for losses, liabilities, injuries, or damages arising out of or in connection with the work done or to be performed under this Agreement including but not limited to any accident or injury of any of its employees or sub-contractors during the term of this Agreement , or for any injury to any person or damages or loss of properties arising from the construction or any act or omission of the Contractor or anyone in its employment, or its subcontractors.
- 11.6 The Contractor shall comply with local laws on wages and such other labor laws including all other laws, orders and regulations of any government authority in connection with the Works.
- 11.7 The Contractor shall at all times defend, indemnify, and hold harmless TSOC, its officers, employees, and agents from and against all losses, costs, damages and expenses (including legal fees and costs), claims, suits, proceedings, demands and liabilities of any kind or nature to the extent arising out of or resulting from acts or omissions of the Contractor or its employees, officers, agents or subcontractors, in the performance of this Agreement. TSOC shall promptly notify the Contractor of any written claim, loss, or demand for which the Contractor is responsible under this clause.

12. Inspection of Works

- 12.1 TSOC reserves the right for itself and its representatives to inspect the Works, while in progress, so as to give TSOC the opportunity to reject the whole or any portion thereof, which in the opinion of TSOC's representative is defective or substandard.

12.2 The Contractor shall allow the Project Manager and other TSOC representatives to access to the work site at any time.

13. Insurance

13.1 Without limiting the Contractor's liability pursuant to Article 11 (Contractor's Responsibility), the following insurance cover is to be provided and maintained by the Contractor for the entire duration of this Agreement:

- (a) Third party liability for any one claim or series of claims arising out of any one accident or event;
- (b) Workmen's compensation and/or employer's liability insurance which complies with applicable legislation;
- (c) Automobile public liability and property damage insurance; and
- (d) Cover against loss or damage to the Works and materials during the construction.

13.2 The amount of coverage for each type of insurance is to be in line with relevant industry standards and in an amount acceptable to TSOC.

13.3 Policies and certificates of insurance are to be provided to TSOC prior to the commencement of the Works.

14. Warranties

14.1 The Contractor represents and warrants that it is financially sound and duly licensed, with the adequate labor/human resources, equipment and tools, competence, expertise and skills necessary to carry out fully and satisfactorily, within the stipulated completion period, the Works in accordance with this Agreement .

14.2 The Contractor guarantees and warrants the performance and completion of the design and construction work to the full and complete satisfaction of TSOC. The Contractor remains responsible for the damages caused or identified within 12 (twelve) months from the date of TSOC's Provisional Acceptance of the Works as per Articles 4.6 or 4.7, on account of defects in the construction, or the use of materials of inferior quality furnished by it, or due to any violation of the terms of the Agreement.

14.3 In case of any defect in workmanship or materials, which may become apparent in the course of construction, the Contractor shall, within 7 (seven) calendar days from TSOC's demand, at Contractor's own cost and expense, remedy such portion of the Works done by the Contractor as in the opinion or judgment of TSOC is unsound, incorrect or defective or not in accordance with the plans and specifications.

14.4 In case of Contractor's default, failure or refusal to carry out such order to remove and replace the unsound, incorrect or defective portion of the Works within 7 (seven) days as required by the previous clause, TSOC may terminate this Agreement and/or engage the services of other persons to carry out the same. The Contractor shall bear all

expenses arising there from or incidental thereto. TSOC may require direct reimbursement for the cost of such action from the Contractor, deduct the expenses from any amount due to the Contractor, or deduct the amount from Performance Bond, the Bank Guarantee or the Retention Amount.

14.5 If any defects or imperfections are discovered by TSOC and communicated to the Contractor after provisional acceptance but prior to final acceptance of the Works due to defective or improper workmanship and/or inferior quality of the material used, the Contractor shall immediately correct such defects within a period of 5 (five) days of receipt of written notice from TSOC. Where the Contractor fails to act within this period, TSOC may engage the services of a third party to correct the defect and hold the Contractor liable for the cost of such services. In such circumstances the Contractor shall reimburse TSOC the cost of such repair, with interest at 2% (two per cent) per month from the time such expenses were incurred until fully reimbursed. The Performance Bond, Bank Guarantee and Retention, if not yet released at the time the said defects are found, may be used for this purpose.

14.6 The Contractor shall perform repair work with the utmost care and diligence to protect existing facilities and prevent damage thereto. In the event that damage to existing facilities is caused by such repairs, the Contractor shall repair such damage at its own expense and to TSOC's satisfaction and acceptance.

14.7 The Contractor further warrants that:

- a) In all circumstances it shall act in the best interests of TSOC;
- b) It shall comply with all applicable laws, ordinances, rules and regulations when performing its obligations under this Agreement ;
- c) No official or employee of TSOC or any third party has received or will receive from, will be offered by, the Contractor any direct or indirect benefit arising from the Agreement or award thereof;
- d) It has not misrepresented or concealed any material facts in the procuring of this Agreement;
- e) All materials used are new, legally sourced and fit for their particular purpose;
- f) No asbestos or any other health hazard materials (lead paints etc.) will be used in the course of the construction;
- g) The Contractor, its staff or shareholders have not previously been declared by TSOC ineligible to be awarded contracts by the TSOC;
- h) It shall abide by the highest ethical standards in the performance of this Agreement, which includes not engaging in any discriminatory or exploitative practice or practice inconsistent with the rights set forth in the Convention on the Rights of the Child;
- i) The remuneration of the Contractor under this Article 3.1 shall constitute the sole remuneration in connection with this Agreement. The Contractor, its officers and employees shall not accept for their own benefit any trade commission, discount or

similar payment in connection with activities pursuant to this Agreement or the discharge of its obligations thereunder. The Contractor shall ensure that any subcontractors, as well as the officers, personnel and agents of either of them, similarly, shall not receive any such additional remuneration.

14.8 The Contractor further warrants that it shall:

- a) Take all appropriate measures to prohibit and prevent actual, attempted and threatened sexual exploitation and abuse (SEA) by its employees or any other persons engaged and controlled by it to perform activities under this Agreement (“other personnel”). For the purpose of this Agreement, SEA shall include:
 1. Exchanging any money, goods, services, preferential treatment, job opportunities or other advantages for sexual favours or activities, including humiliating or degrading treatment of a sexual nature; abusing a position of vulnerability, differential power or trust for sexual purposes, and physical intrusion of a sexual nature whether by force or under unequal or coercive conditions.
 2. Engaging in sexual activity with a person under the age of 18 (“child”), except if the child is legally married to the concerned employee or other personnel and is over the age of majority or consent both in the child’s country of citizenship and in the country of citizenship of the concerned employee or other personnel.
- b) Strongly discourage its employees or other personnel having sexual relationships with TSOC beneficiaries.
- c) Report timely to TSOC any allegations or suspicions of SEA, and investigate and take appropriate corrective measures, including imposing disciplinary measures on the person who has committed SEA.
- d) Ensure that the SEA provisions are included in all subcontracts.
- e) Adhere to above commitments at all times. Failure to comply with (a)-(d) shall constitute grounds for immediate termination of this Agreement.

14.9 The above warranties survive the expiration or termination of this Agreement.

15. Assignment of Agreement and Subcontracting

15.1 The Contractor shall not assign or subcontract the Agreement or any work under this Agreement in part or all, unless agreed upon in writing in advance by TSOC. Any subcontract entered into by the Contractor without approval in writing by TSOC may be cause for termination of the Agreement.

15.2 In certain exceptional circumstances by prior written approval of TSOC, specific jobs and portions of the Project may be assigned to a subcontractor. Notwithstanding the said written approval, the Contractor shall not be relieved of any liability or obligation under this Agreement nor shall it create any contractual relation between the subcontractor and TSOC. The Contractor remains bound and liable thereunder and it

shall be directly responsible to TSOC for any faulty performance under the subcontract. The subcontractor shall have no cause of action against TSOC for any breach of the sub-contract.

16. Force Majeure

Neither Party will be liable for any delay in performing or failure to perform any of its obligations under this Agreement if such delay or failure is caused by force majeure, such as civil disorder, military action, natural disaster and other circumstances which are beyond the control of the Party in question. In such event, the Party will give immediate notice in writing to the other Party of the existence of such cause or event and of the likelihood of delay.

17. Independent Contractor

The Contractor shall perform all Services under this Agreement as an independent contractor and not as an employee, partner, or agent of TSOC.

18. Audit

The Contractor agrees to maintain records, in accordance with sound and generally accepted accounting procedures, of all direct and indirect costs of whatever nature involving transactions related to the provision of services under this Agreement. The Contractor shall make all such records available to TSOC or TSOC's designated representative at all reasonable times until the expiration of 7 (seven) years after the date of final payment, for inspection, audit, or reproduction. On request, employees of the Contractor shall be available for interview.

19. Confidentiality

All information which comes into the Contractor's possession or knowledge in connection with this Agreement is to be treated as strictly confidential. The Contractor shall not communicate such information to any third party without the prior written approval of TSOC. The Contractor shall comply with TSOC Data Protection Principles in the event that it collects, receives, uses, transfers or stores any personal data in the performance of this Agreement. This obligation shall survive the expiration or termination of this Agreement.

20. Notices

Any notice given pursuant to this Agreement will be sufficiently given if it is in writing and received by the other Party at the following address:

The Smile of the Child (TSOC)

Attn: [Name of TSOC contact person]

[TSOC's address]

Email: [TSOC's email address]

[Full name of the Contractor]

Attn: [Name of the Contractor's contact person]

[Contractor 's address]

Email: [Contractor 's email address]

21. Dispute Resolution

- 21.1. Any dispute, controversy or claim arising out of or in relation to this Agreement, or the breach, termination or invalidity thereof, shall be settled amicably by negotiation between the Parties.
- 21.2. In the event that the dispute, controversy or claim has not been resolved by negotiation within 3 (three) months of receipt of the notice from one party of the existence of such dispute, controversy or claim, either Party may request that the dispute, controversy or claim is resolved by conciliation by one conciliator in accordance with the UNCITRAL Conciliation Rules of 1980. Article 16 of the UNCITRAL Conciliation Rules does not apply.
- 21.3. In the event that such conciliation is unsuccessful, either Party may submit the dispute, controversy or claim to arbitration no later than 3 (three) months following the date of termination of conciliation proceedings as per Article 15 of the UNCITRAL Conciliation Rules. The arbitration will be carried out in accordance with the 2010 UNCITRAL arbitration rules as adopted in 2013. The number of arbitrators shall be one and the language of arbitral proceedings shall be English, unless otherwise agreed by the Parties in writing. The arbitral tribunal shall have no authority to award punitive damages. The arbitral award will be final and binding.
- 21.4. The present Agreement as well as the arbitration agreement above shall be governed by internationally accepted general principles of law and by the terms of the present Agreement, to the exclusion of any single national system of law that would defer the Agreement to the laws of any given jurisdiction. Internationally accepted general principles of law shall be deemed to include the UNIDROIT Principles of International Commercial Contracts. Dispute resolution shall be pursued confidentially by both Parties. This Article survives the expiration or termination of the present Agreement.

22. Use of TSOC Name

The use of the official logo and name of TSOC may not be used by the Contractor without the prior written approval of TSOC.

23. Status of TSOC

Nothing in this Agreement affects the privileges and immunities enjoyed by TSOC as an intergovernmental organization.

24. No Waiver Clause

TSOC's failure to insist upon a strict performance of any of the terms and conditions of this Agreement shall not be deemed a relinquishment of any right or remedy that TSOC may have, nor shall it be construed as a waiver of Contractor's subsequent breach of this Agreement which shall continue to be in full force and effect. No waiver by TSOC of any of its rights under this Agreement shall be deemed to have been made unless expressed in writing and signed by TSOC.

25. Termination of Agreement

25.1 TSOC may, at its option, terminate for convenience any of the work under this Agreement in whole or in part, at any time by 7 (seven) days written notice to Contractor. Such notice shall specify the Completion Rate upon termination as established by Article 6.2 and the effective date of termination. Upon receipt of such notice Contractor shall:

- (a) Immediately discontinue the Works on the date and to the extent specified in the notice and place no further purchase orders or subcontracts for materials, services, or facilities other than as may be required for completion of such portion of the Works that is not terminated;
- (b) Promptly cancel upon terms satisfactory to TSOC all purchase orders, subcontracts, rentals, or any other agreement existing for the performance of the terminated work, or assign those agreements as directed by TSOC;
- (c) Assist TSOC in the maintenance and protection of work in progress, plant, tools, equipment, property and materials acquired by Contractor or furnished by TSOC under this Agreement;
- (d) Complete performance of such portion of the Works which are not terminated; and
- (e) Perform other related tasks, which TSOC may reasonably instruct, in order to effect the termination of the work.

25.2 Upon termination as per the previous clause, as the sole right and remedy of Contractor, TSOC shall pay in accordance with the following:

- (a) The Contract Price corresponding to the Works performed in accordance with this Agreement prior to the date of such notice of termination;
- (b) Costs corresponding to the portion of the Works thereafter performed as specified in such notice of termination, subject to TSOC's acceptance of such work;
- (c) Reasonable and documented administrative costs of settling and paying claims arising out of the termination of work under purchase orders or subcontracts, as agreed by TSOC; and
- (d) Reasonable costs incurred in demobilization and the disposition of residual material and equipment, as agreed by TSOC.

The Contractor shall submit within 7 (seven) calendar days after receipt of notice of termination, a written statement setting forth its proposal for an adjustment to the Contract Price to include only the incurred costs described in this clause. TSOC shall review the proposal, and negotiate an equitable adjustment of the Contract Price. Other amounts paid in advance by TSOC will be refunded by the Contractor within 7 (seven) days.

25.3 TSOC may terminate this Agreement or any of the work under this Agreement at any time by immediate written notice to the Contractor, for causes which include but are not limited to:

- (a) The Contractor's violation of the terms and conditions of this Agreement;
- (b) Contractor's default, failure or refusal to carry out order to remove and replace the unsound, incorrect or defective portion of the Works as per Article 14.5;
- (c) Non-completion of the Works within the time agreed upon or the expiration of extension agreed upon, or delayed progress of the Works as stated in Article 6 or sub-standard work;
- (d) Institution of insolvency or receivership proceedings involving the Contractor;
- (e) If, in the judgment of TSOC, the Contractor has engaged in corrupt or fraudulent practices in competing for and/or implementing the Agreement.

The written notice shall specify the Completion Rate as established by Article 6.2 upon termination, the effective date of termination, and any additional tasks that need to be performed including but not limited to those enumerated in Articles 25.1 and 25.2. Such termination shall be without prejudice to TSOC's other rights and remedies in this Agreement, in law and in equity. Amounts paid in advance by TSOC will be refunded by the Contractor within 7 (seven) days from the date of TSOC's request.

25.4 Where TSOC terminates this Agreement as per Article 25.3 above, all materials, plant, equipment and works financed under this Agreement shall be deemed to be the property of TSOC, and the Contractor shall be liable for all the direct replacement cost incurred to TSOC for the completion of the Works. The Contractor shall pay TSOC the required amount within 30 (thirty) days from receipt of an invoice from TSOC. The direct

replacement cost shall be the difference between the remaining amount in Contract Price not paid to the Contractor upon termination including the retention amount (after the settlement of all remaining debts and obligations) and the actual cost spent by TSOC for completion of the remainder of the Works plus overhead of 10% (ten per cent) for additional administrative efforts of TSOC.

25.5 Upon any termination, the Contractor shall waive any claims for damages including loss of anticipated profits on account thereof.

26. Severability

If any part of this Agreement is found to be invalid or unenforceable, that part will be severed from this Agreement and the remainder of the Agreement shall remain in full force.

27. Entirety

This Agreement and its Annexes embody the entire agreement between the Parties and supersedes all prior agreements and understandings, if any, relating to the subject matter of this Agreement.

28. *Special Provisions (Optional)*

Due to the requirements of the Donor financing the Project, the Implementing Partner shall agree and accept the following provisions:

[Insert all donor requirements which must be flown down to TSOC's implementing partners and subcontractors. In case of any doubt, please contact]

29. Final clauses

29.1 This Agreement will enter into force upon signature by both Parties. It will remain in force until completion of all obligations of the Parties under this Agreement unless terminated earlier in accordance with Article 25.

29.2 Amendments may be made by mutual agreement in writing between the Parties.

Signed in duplicate in English, on the dates and at the places indicated below.

For and on behalf of
The Smile of the Child

For and on behalf of
[Full name of the Contractor]

Signature

Signature

Name
Position
Date
Place

Name
Position
Date
Place

ANNEX E: PAYMENT SCHEDULE

1. *(Applicable if an advance payment is made)* TSOC shall release an advance payment equivalent to *[percentage]* of the Contract Price in the amount of *[currency] [insert amount in numbers] (amount in words and currency in words)* within 7 (seven) calendar days from the Contractor's signature of this Agreement and Contractor's submission of and TSOC 's approval of the following items:
 - a. Drawings and Technical Documents for Permit Purposes;
 - b. Approved Detailed Construction and Workings Drawings;
 - c. Work Schedule;
 - d. List of Sub-Contractors and Suppliers *(if applicable)*;
 - e. Unconditional Bank Guarantee equivalent to *[percentage to match advance payment]* percent of the Contract Price to guarantee the advance payment, if applicable;
 - f. Performance Security if required under Article 9.

[currency code] amount in numbers (amount in words) shall be withheld by TSOC as Retention as per Article 10 of the Agreement.

2. TSOC will pay the Contractor *[currency code] amount in numbers (amount in words)* on confirmation by TSOC of satisfactory progress toward the completion of *(amount)% ([amount in words] per cent)* actual measured work as per Bill of Quantities at Annex B and logbook. *[currency code] amount in numbers (amount in words)* shall be withheld by TSOC as Retention as per Article 10 of the Agreement.
3. TSOC will pay the Contractor *[currency code] amount in numbers (amount in words)* after the completion of 100% (one hundred per cent) of the Works and inspection and provisional acceptance of the completed Works . *[currency code] amount in numbers (amount in words)* shall be withheld by TSOC as Retention as per Article 10 of the Agreement.
4. The balance of 10% (ten per cent) of the total Contract Price in the amount of *[currency code] amount in numbers (amount in words)* will be held for 12 (twelve) months after provisional acceptance of the completed Works in accordance with Article 10 of this Agreement

Bank Guarantee for Advance Payment

To: *[name and address of TSOC]*

Contract Name: *[name of Contract]*

Gentlemen:

In accordance with the provisions of the Contract, Article No. 4 (“Manner of Payment”) of the above-mentioned Contract, *[name and address of Contractor]* (hereinafter called “the Contractor”) shall deposit with *[TSOC]* a Bank Guarantee to guarantee his proper and faithful performance under the said Clause of the Contract in an amount of *[amount of Guarantee in words and figure]*.

We, the *[Bank]*, as instructed by the Contractor, agree unconditionally and irrevocably to guarantee as primary obligator and not as Surety merely, the payment to *[TSOC]* on his first demand without whatsoever right of objection on our part and without his first claim to the Contractor, in the amount not exceeding *[amount of Guarantee] [amount in words]*.

We further agree that no change or addition to or other modification of the terms of the Contract to be performed there under or of any of the Contract documents which may be made between *[TSOC]* and the Contractor, shall in any way release us from any liability under this Guarantee, and we hereby waive notice of any such change, addition, or modification.

This Guarantee shall remain valid and in full effect from the date of the advance payment under the Contract until *[TSOC]* receives full repayment of the same amount from the Contractor.

Yours truly,

Signature and seal: _____

Name of Bank: _____

Address: _____

Date: _____