

Terms and Conditions applicable to ITCILO Contracts

1. The Parties

1.1. **Legal status:** The International Training Centre of the International Labour Organization (**ITCILO**), and the Contractor (referred to individually as a **Party** and together as the **Parties**) have the following legal status:

- 1.1.1. the ITCILO has full juridical personality, including the ability to contract, and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes pursuant to the Statute of the International Training Centre of the International Labour Organisation;
- 1.1.2. the Contractor is an independent contractor. The Contractor will neither seek nor accept instructions from any authority external to the ITCILO in connection with the performance of its obligations. Nothing contained in or relating to the Contract will be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent; and
- 1.1.3. the employees, officials, representatives, staff or subcontractors (**Personnel**) of either of the Parties will not be considered in any respect as being the employees or agents of the other Party. Each Party is solely responsible for all claims arising out of or relating to the engagement of its respective Personnel.

1.2. **Privileges and immunities:** Nothing in or related to the Contract will be deemed a waiver of any of the privileges and immunities of the ITCILO recognized under the Convention on the Privileges and Immunities of the Specialized Agencies (1947), its Annex I relating to the ILO and the ITCILO, as a controlled entity of the ILO, or other relevant national and international law.

1.3. **Tax exemption:** The ITCILO, as a United Nations Specialized Agency, enjoys a special tax status in Italy and in other Member States. Unless specified in the Purchase Order/Contract Document, invoices will be submitted exclusive of any amount representing charges, duties or taxes (e.g., value added tax).

1.4. **Restrictions in advertising:**

- 1.4.1. Except with the prior written authorization of the ITCILO, the Contractor may not:
 - 1.4.1.1. use or reproduce the emblem, logo, name or official seal of the ITCILO or of the ITCILO, including abbreviations, in connection with the Contractor's business or otherwise; and
 - 1.4.1.2. advertise or otherwise make public the fact that it is a Contractor to the ITCILO. Such restrictions will not apply to the mention of the ITCILO or of the ITCILO for the purposes of the Contractor's annual or other reporting obligations (e.g., audit, board, shareholders).
- 1.4.2. The ITCILO reserves the right to publish on the internet, including the websites of the ITCILO and the United Nations Global Marketplace (UNGM), or otherwise make public the Contractor's name and address as well as basic information regarding the Contract, including the amount of the Contract.

2. Contract Documents and Validity

2.1. **Nature of the Contract:**

- 2.1.1. The Contract constitutes the complete and exclusive agreement between the Parties. It supersedes all proposals, verbal or written arrangements or agreements, and any other communications by one of the Parties or between the Parties relating to the Contract.
- 2.1.2. The Contract is composed of the following documents listed in their order of precedence:
 - 2.1.2.1. Purchase Order/Contract Document, including any specific conditions;
 - 2.1.2.2. Terms and Conditions applicable to ITCILO Contracts; and
 - 2.1.2.3. any other document explicitly listed in the Purchase Order/Contract Document and attached to it (i.e., **Annex 1, 2**, etc.).
- 2.1.3. Unless otherwise included in any of the documents listed in paragraph **2.1.2.**, the terms of business, conditions of contract, general reservations published or issued by the Contractor or written in any correspondence or documents emanating from the Contractor will not form part of the Contract.
- 2.1.4. The original of the Contract has been written and signed in English. If the Contract is translated into another language, the English version will govern and prevail.

2.2. **Validity:** The Contract will expire upon fulfilment by the Parties of their respective obligations or otherwise in accordance with its provisions.

2.3. **Non-exclusivity:** The ITCILO may purchase goods or equipment (referred together to as **Goods**), or contract for works or services (referred together to as **Services**) of the same or similar kind and quality described in the Contract from any other source at any time.

2.4. **Communications:** Communications (e.g., notices, documents) will be addressed to the ITCILO contact indicated on the Purchase Order/Contract Document.

3. Price and Payment

3.1. **Price and currency:** The price and currency specified in the Purchase Order/Contract Document are firm-fixed and not subject to any adjustment or revision due to price or currency fluctuations, or alteration in the actual

costs incurred by the Contractor in the performance of the Contract. All expenditures related to the assignment, replacement and withdrawal of the Contractor's Personnel, including allowances, cost of travel arrangements, local transport, and insurance, will be borne by the Contractor.

3.2. Payment:

3.2.1. Upon receipt of the Contractor's written invoice and any related supporting documentation, the ITCILO will effect payment, normally within thirty (30) days, by bank transfer (the ITCILO will not pay through letters of credit or bank draft). The written invoice will be sent electronically to Accounts@itcilo.org with copy to the addressee specified in the Purchase Order/Contract Document and will contain the:

- 3.2.1.1. number of the Purchase Order/Contract Document that it relates to;
- 3.2.1.2. invoiced amount (without the rounding of currency decimals and exclusive of VAT, duties or charges); and
- 3.2.1.3. date of the delivery of Goods or the completion of Services.

In no event will complete or partial payment by the ITCILO, in and of itself, constitute acceptance of the Goods or Services.

3.2.2. The Contractor is responsible for providing the ITCILO with complete, accurate and up to date information sufficient for it to effect payment. If the ITCILO is unable to effect payment due to the failure of the Contractor to provide such information, the ITCILO will not be obligated to effect payment beyond the time limit referred to in paragraph 15.8. (Limitation on actions).

4. Performance

4.1. **Observance of laws by Contractor:** The Contractor will comply with all laws, ordinances, regulations and rules bearing upon the performance of its obligations and, in particular, those concerning terms of employment, conditions of work and any collective agreements to which it is a party.

4.2. **Duty of care:** The Contractor undertakes to perform its obligations in good faith with the fullest regard to the ITCILO's interests, providing its expertise and relevant professional advice, using the degree of skill, care, and diligence to be expected from an entity performing in the trade or industry concerned in the area where work is carried out. If the Contractor becomes aware of any circumstances or information that may threaten the proper performance of the Contract, it will immediately notify the ITCILO.

4.3. **Sustainability:** In addition to the foregoing, the Contractor will wherever possible take appropriate steps to perform its obligations in a manner that takes into account economic and social considerations, as well as is respectful of the environment (e.g., undertaking initiatives to promote greater environmental responsibility and encourage the development and diffusion of environmentally friendly technologies and solutions, and implementing sound life-cycle practices).

4.4. Responsibility for Personnel:

4.4.1. Each Party is solely responsible for the professional and technical competence of its respective Personnel, which will permit that Party to effectively perform its obligations.

4.4.2. The Contractor will bring to the attention of its Personnel their conditions of work and any other information relevant to the performance of the Contract (e.g., paragraph 12. (Responsible Business Practices)), including through the posting of notices in conspicuous places in the establishments and workplaces concerned and, where effective enforcement does not exist, provide for a system of inspection adequate to ensure effective enforcement.

4.4.3. The ITCILO reserves the right to request the withdrawal or replacement of any of Contractor's Personnel, at any time, including as in the case of demonstrable poor performance or misconduct by the Contractor's Personnel. Such request will be in writing and will not be unreasonably withheld by the Contractor.

4.4.4. If any of the Contractor's Personnel are removed by the Contractor or for any reason are no longer available, the Contractor will replace said Personnel with individuals possessing equal or better knowledge, experience and ability to perform its obligations.

4.4.5. Regardless of cause, the withdrawal and replacement of the Contractor's Personnel will be carried out in a manner that will not adversely affect the Contractor's ability to perform its obligations.

4.5. Items furnished by either Party:

4.5.1. The Contractor is solely responsible for the arrangement, provision and operation of all equipment, supplies, related support services and Personnel (including any related costs so incurred) necessary for the Contractor to perform its obligations.

4.5.2. Where proprietary items (e.g., devices, documents, drawings, estimates, gauges, jigs, manuscripts, maps, mosaic parts, patterns, photographs, plans, recommendations, records, reports, samples, source codes, and software) or Goods are funded or provided by the ITCILO to the Contractor or are developed by the Contractor for the ITCILO to support the performance of the Contractor's obligations, the following terms apply:

4.5.2.1. the Contractor acknowledges and agrees that the ITCILO hereby disclaims any and all warranties regarding the functionality or installation of the foregoing. The Contractor is solely responsible for their installation (e.g., any Personnel, tools, materials or other Goods necessary for installation), maintenance and functioning;

4.5.2.2. the Contractor will promptly report to the ITCILO each loss, damage or theft of the foregoing;

4.5.2.3. title to the foregoing will be retained by the ITCILO. The Contractor will not cause or permit any lien, claim or other encumbrance to be attached to any or all of the foregoing, or to any other item that is the subject matter of the Contract; and

4.5.2.4. upon the termination or expiration of the Contract, all such proprietary items and Goods will be returned to the ITCILO in the same condition as when delivered to the Contractor, excluding normal wear and tear. Their return, or other disposal as the ITCILO may direct, will be at the Contractor's expense. Upon termination or expiration of the Contract, the Contractor will take all reasonable measures to avoid any loss of or deterioration to such proprietary items or Goods.

4.5.3. As directed by the ITCILO, the Contractor will: (i) compensate the ITCILO for actual costs of any loss of, damage to, or deterioration of such proprietary items and Goods that is beyond normal wear and tear; (ii) replace or repair them; or (iii) indemnify the ITCILO for the cost of replacing or repairing them.

4.6. Access:

4.6.1. If any of the contractual obligations will be performed on ITCILO premises, the ITCILO will facilitate access in line with requirements for such performance. The Contractor will ensure that its Personnel comply with ITCILO safety and security requirements and any other relevant ITCILO rules and procedures while on ITCILO premises, as well as with the instructions given by designated ITCILO officials.

4.6.2. If any of the contractual obligations require access to the ITCILO's Information Technology (IT) systems, infrastructure or applications, the ITCILO will grant access rights in line with requirements for such performance. The Contractor will only allow access to its Personnel on a "need to know" basis. Each access right will be unique corresponding to an assigned individual user (i.e. non-transferrable). In the event that the Contractor's Personnel is replaced (temporarily or permanently) or withdrawn, the Contractor will inform the ITCILO in writing so as to permit the original access right to be de-activated and, as necessary, a new unique access right to be assigned.

4.6.3. End-user computing devices such as personal computers, laptops, smartphones, and tablets used to access the ITCILO's IT systems, infrastructure or applications will comply with any ITCILO instructions on end-user computing devices and be in conformity with industry standards¹.

4.7. Installation, maintenance, training: Where installation, maintenance or training is required, the following terms apply:

4.7.1. the Contractor, in a timely manner, will arrange for and provide all equipment, supplies, related support services and Personnel necessary to complete the installation, maintenance or training;

4.7.2. all costs related to the installation, maintenance or training will be borne by the Contractor;

4.7.3. the ITCILO and the consignee will be permitted to monitor the installation or maintenance work, as well as to oversee the training; and

4.7.4. the Contractor will train any persons identified by the ITCILO or the consignee in the installation, operation, maintenance, etc., of the Goods or Services described in the Contract.

4.8. Performance issues:

4.8.1. Should the Contractor encounter conditions that do not constitute force majeure and which impede, or are likely to impede, timely and/or satisfactory performance of the Contract, the Contractor will:

4.8.1.1. immediately notify the ITCILO in writing with full particulars, including the likely duration and the cause. The Parties will consult as soon as practicable after receipt of such notice, to evaluate any available means of mitigation or appropriate remedies;

4.8.1.2. be liable for any increase in the price payable by the ITCILO resulting from the procurement of all or part of the Goods or Services, including from other sources, which the Contractor failed to provide in accordance with the Contract; and

4.8.1.3. pay to the ITCILO as liquidated damages a sum equal to three-tenths of one (0.3) per cent of the Contract price for each day of delay until actual delivery or performance, up to a maximum of ten (10) per cent of the Contract price. The liquidated damages amount specified herein are intended to reasonably compensate the ITCILO, as it is impractical or difficult to quantify the damages suffered by the ITCILO and is not intended to punish the Contractor.

4.8.2. The ITCILO may apply the additional costs incurred or recover such liquidated damages, by deduction or otherwise, against future amounts owed by the ITCILO to the Contractor.

4.8.3. In addition to paragraph 11.2.4. (Confidential information exclusions), the ITCILO may record performance issues by the Contractor and such record may negatively affect future business opportunities including with the ITCILO, entities of the United Nations System and multilateral development finance institutions.

5. Provisions for Goods

5.1. Packaging: Where packaging is required, the following terms apply:

5.1.1. the Contractor will package and mark all Goods for shipment and delivery in accordance with the highest standards of commercial packaging for the type and quantity of the Goods and the modes of transport used and the packaging will comply with any requirements imposed by applicable laws and standards. In addition, the Contractor will ensure that:

¹ ISO/IEC 27001: 2013 or equivalent.

5.1.1.1. packaging will be sufficient to withstand local conditions, including rough handling, exposure to extreme climate conditions, dusty environments, salt and precipitation, and open storage for up to several months after arrival at the consignee's destination specified in the Purchase Order/Contract Document;

5.1.1.2. packing container sizes and weights will be determined by reference to the conditions prevailing at the final destination, including where relevant, the absence of mechanical equipment for loading and offloading;

5.1.1.3. dangerous or combustible Goods will be packed separately, in accordance with the highest safety standards of commercial packaging, and marked as containing dangerous or combustible Goods; and

5.1.1.4. no markings on the outside of the packaging indicate the contents of the box. Boxes in shipments consisting of multiple boxes will be numbered and will identify the total number of boxes in the shipment (i.e., box 1 of 5, 2 of 5, etc.). A packing list will be provided with all details of its contents. Packing lists will state complete shipping marks, number of boxes, contents, gross and net weights in kilograms of each box, measurements and volume in cubic meters.

5.1.2. The Contractor will have no right to the return of packing materials.

5.1.3. Any costs relating to or arising from packaging or marking deficiencies or deviations from the Contract will be borne by the Contractor.

5.2. **Shipment, transport, delivery:**

5.2.1. Where shipment, transport or delivery are required, the following terms apply unless otherwise specified in the Purchase Order/Contract Document:

5.2.1.1. the Contractor is solely responsible for making all shipment, transport and delivery arrangements necessary for the performance of its obligations, in particular obtaining any approvals, authorizations, certifications, licenses, permits, registrations, necessary for the shipment, transport, customs clearance and delivery in relation to the import or export of Goods;

5.2.1.2. all costs associated with any shipment, transport and delivery, including all freight and insurance costs, and all costs relating to obtaining any approvals, authorizations, certifications, licenses, permits or registrations will be borne by the Contractor;

5.2.1.3. the Contractor assumes all liabilities associated with war, strike, riot, appropriation, confiscation, delay, damage (regardless of cause), destruction, loss or theft of the Goods until delivery at the final destination; and

5.2.1.4. the Contractor will insure the Goods against all the above risks until delivery at the final destination. The value of the Goods will be calculated on the basis of cost and freight plus ten (10) per cent. A duplicate of the insurance certificate will be sent to the ITCILO and the original to the consignee (if different from the ITCILO).

5.2.2. The Contractor will ensure that the ITCILO or the consignee receives all necessary transport documents in a timely manner, so as to enable the ITCILO or the consignee to take delivery in accordance with the requirements of the Contract. A duplicate of all necessary transport documents will be sent to the ITCILO or the consignee in advance of the transport and delivery.

5.2.3. Partial shipment and the combining of Goods supplied against different Purchase Orders to the same consignee are not allowed, except with the prior written authorization of the ITCILO.

5.3. **Inspection, acceptance, rejection:** Where inspection and acceptance or rejection are required, the following terms apply:

5.3.1. Notwithstanding any pre-delivery inspection, the ITCILO or the consignee may also inspect the Goods upon delivery in order to confirm that they conform to the requirements of the Contract. The ITCILO or the consignee will have a reasonable time after their delivery to inspect and to accept or reject the Goods that do not conform to the requirements of the Contract. The ITCILO's or the consignee's inspection of the Goods, failure to inspect and accept or reject them, and acceptance or rejection of the Goods will not relieve the Contractor from its warranties or the performance of its obligations, nor impose liability on the consignee or the ITCILO, for defects or non-conforming Goods.

5.3.2. the ITCILO or the consignee may condition acceptance of the Goods upon successful completion of acceptance tests. Pending completion of such tests, neither complete or partial payment nor delivery into the physical custody of the ITCILO or the consignee will constitute acceptance.

5.3.3. in the event that the Goods are deemed defective or otherwise do not conform to the requirements of the Contract, the ITCILO or the consignee may reject them in whole or in part. Upon receipt of corresponding notice from the ITCILO, the Contractor will immediately consult with the ITCILO to:

5.3.3.1. arrange removal of the rejected Goods and provide a full refund. If only a portion of the Goods require removal then a proportionate refund may be agreed upon by the Parties. In the event that the Contractor fails to remove the Goods, the consignee or the ITCILO may dispose of the rejected Goods in such manner as either deem appropriate, without any liability or payment owed to the Contractor; or

5.3.3.2. repair the Goods in a manner that would enable them to conform to the requirements of the Contract; or

5.3.3.3. replace the Goods with Goods of equal or better quality.

5.3.4. Unless otherwise instructed by the ITCILO, the Contractor undertakes to complete the foregoing no later than thirty (30) days after having received notice.

5.3.5. The Contractor will pay all costs relating to the repair or return of the defective or non-conforming Goods, including payment of any customs duties that may be required on rejected Goods that were imported

duty free, as well as the costs relating to their storage and for the delivery of any replacement Goods to the ITCILO.

5.4. **Title:** Unless otherwise instructed by the ITCILO, title to the Goods will not pass to the ITCILO until either the ITCILO or the consignee, on the ITCILO's behalf, have accepted the Goods.

6. Warranty

6.1. Warranty of Goods:

6.1.1. In addition to conforming to the specifications contained in the Purchase Order/Contract Documents with respect to their quantity, quality, description and full compatibility with conditions prevailing in the final place of destination, the Contractor warrants that the Goods:

6.1.1.1. will be new and unused, free from defects, and will conform to their respective product specifications which are incorporated by this reference in the Contract;

6.1.1.2. are fit for the purposes for which such Goods are ordinarily used and for purposes made expressly known in writing in the Contract;

6.1.1.3. are free from any right or claim by any third-party and unencumbered by any title or other rights, including any liens or security interests and claims of infringement of any intellectual property rights. The Contractor will indemnify, hold harmless and defend the ITCILO from any actions or claims brought against the ITCILO pertaining to the alleged infringement of any such third-party rights;

6.1.1.4. are securely contained, packaged and marked, taking into account the modes of transport, in a manner so as to protect the Goods during delivery to their final destination; and

6.1.1.5. conform with all applicable technical, safety, health and environment protection standards or recommendations, including those relating to ITCILO conventions on safety and health.

6.1.2. Where the Contractor is not the original manufacturer of the Goods, the Contractor will provide the ITCILO with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract.

6.1.3. With the exception of paragraph **6.1.1.4.**, all warranties contained in paragraph **6.1.** will remain fully valid following the delivery of the Goods at the final destination for a period of not less than one (1) year.

6.1.4. During the period in which the Contractor's warranties are in effect, upon notice by the ITCILO that the Goods do not conform to the terms or requirements of the Contract or other breach of the warranties contained in paragraphs **6.1.1.** and **6.1.2.**, the Contractor will immediately undertake, at its sole expense, best efforts to cure such defects and non-conformities in the delivered Goods, or other breach of the warranties. If the Contractor is unable to correct such defects and non-conformities promptly, but in no case longer than fifteen (15) days, the Contractor will immediately replace the defective Goods with Goods of the same or better quality; or, at its sole expense, remove the defective Goods and fully reimburse the ITCILO for the price paid for the defective Goods.

6.1.5. In the event that the Contractor fails to meet its obligations under paragraph **6.1.4.**, the ITCILO has the right to independently replace or repair the Goods and the Contractor will be obligated to reimburse the ITCILO for all the additional costs so incurred, including by deduction or otherwise, against future amounts owed by the ITCILO to the Contractor.

6.2. Warranty of Services:

6.2.1. Without prejudice to paragraph **4.2.** (Duty of care), the Contractor warrants that any Services provided in accordance with the Contract will meet the specifications, timeframes and related requirements contained in the Contract. All materials and workmanship utilized in performing the Services will be of the respective kind(s) described in the Contract and free from defects. Materials not conforming to the specifications contained in the Contract will not be used in performance of the Services without prior written approval of the ITCILO.

6.2.2. If the Services do not meet the requirements referred to above, the Contractor will, at its sole expense, either by repair or replacement, correct, promptly modify or change any faulty workmanship materials, parts and equipment supplied by it to the extent necessary to satisfy the above warranty.

6.2.3. If any defect or failure in the Services cannot be rectified by remedial measures within the period agreed by the Parties, the Contractor will be considered to be in default and in addition to exercising any termination or suspension rights, the ITCILO has the right to independently replace or repair the Services and the Contractor will be obligated to reimburse the ITCILO for all the additional costs so incurred, including by deduction or otherwise, against future amounts owed by the ITCILO to the Contractor.

7. Indemnification and Insurance

7.1. **Indemnification:** The Contractor will indemnify, hold harmless and defend, at its sole expense, the ITCILO and its Personnel from and against all complaints, claims, suits, judgments, damages, losses, and liability of any nature or kind including costs, fees and related expenses, arising from acts, omissions or events by the Contractor or its Personnel in the performance of the Contract.

7.2. Insurance:

7.2.1. The Contractor, for the duration of the Contract, any extension thereof or any reasonably adequate period to deal with losses following any termination of the Contract warrants that, and will provide evidence upon request, it has taken out insurance from a reputable insurer, which includes:

7.2.1.1. Coverage for a sufficient amount for any vehicles or equipment used for the performance of the Contract;

7.2.1.2. a comprehensive civil liability insurance with regard to third-parties, including the ITCILO and its Personnel, in respect of physical injury, theft or damage to property, systems and data; and

7.2.1.3. where required, any other insurance in relation with the performance of the Contract as specified in the Purchase Order/Contract Document.

7.2.2. The Contractor acknowledges and agrees that neither the requirement for taking out and maintaining insurance as contained in the Contract nor the amount of any such insurance, including any deductible or retention relating thereto, will in any way be construed as limiting the Contractor's liability arising under or relating to the Contract.

7.3. **Notice:** The Contractor will immediately notify the ITCILO upon becoming aware of:

7.3.1. any complaints, claims, suits, judgments, damages, losses, and liability of any nature or kind including costs, fees and related expenses;

7.3.2. any cancellation or material change of the insurance coverage required under the Contract.

8. Assignment and Subcontracting

8.1. **Assignment:** The Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the ITCILO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, will not be binding on the ITCILO.

8.2. **Subcontracting:** In the event that the Contractor requires the services of any subcontractor, the Contractor will obtain the prior written authorization to subcontract and the approval of the ITCILO of the subcontractor selected. The authorization and approval by the ITCILO of such a subcontractor does not relieve the Contractor of any of its obligations and the Contractor is solely responsible for the Goods and Services provided by a subcontractor in the framework of the Contract, including their quality. The terms of any subcontract will be subject to and be in conformity with the provisions of the Contract with particular attention drawn to paragraphs 4. (Performance), 9. (Intellectual Property), 10. (Data Protection), 11. (Confidentiality), and 12. (Responsible Business Practices). The Contractor will be responsible for ensuring compliance with the above terms, as for its own Personnel, and for any subcontractors and its Personnel who are performing any part of the Contractor's obligations. Except with the prior written authorization to subcontract by the ITCILO of the subcontractor selected, the Contractor will ensure that its subcontractor(s) do not subcontract, assign, transfer, pledge or make any other disposition of the Contract, of any part of it, or of any of its rights, claims or obligations. The provisions of this paragraph apply to any subcontractor who, in turn, requires the services of a subcontractor.

9. Intellectual Property

9.1. **Intellectual Property and other proprietary rights:** All intellectual property and other proprietary rights, including copyrights, industrial designs, patents, source codes, and trademarks, with regard to applications, documents, inventions, know-how, other materials, or products (**Intellectual Property**) that the Contractor has developed under the Contract will be the sole property of the ITCILO and will be communicated in full to the ITCILO, at the latest upon termination or expiration of the Contract.

9.2. **Licensing:** To the extent that any Intellectual Property due to the Organization under paragraph 9.1. includes any Intellectual Property of the Contractor that pre-existed the performance by the Contractor of its obligations or, any Intellectual Property of the Contractor that it may develop or acquire, or that may have been developed or acquired, independently of the performance of its obligations, the Contractor grants to the Organization an unlimited perpetual, royalty-free license to make unrestricted use of such Intellectual Property. The ITCILO will not claim any ownership interest in the pre-existing Intellectual Property described in this paragraph.

9.3. **Third-party rights:** The Contractor undertakes to obtain, at its sole expense, permission to use any third-party protected rights that are necessary for the performance of the Contract (including an unlimited perpetual transferable license to the Organization) and will provide evidence upon request.

10. Data Protection

10.1. **Transfers of ITCILO Data:** Subject to paragraph 10.3., if any of the contractual obligations require access to International Training Centre of the International Labour Organization data including personal data (**ITCILO Data**), the ITCILO will transfer such ITCILO Data necessary for the performance of the Contractor's obligations.

10.2. **Use of ITCILO Data:** Use (including accessing, processing, retention, storage) of ITCILO Data is limited to the purposes contained in the Contract and such use will be limited to Contractor's Personnel on a "need to know" basis. Use of ITCILO Data for internal research, marketing, sales, or promotional purposes is strictly prohibited. Subject to paragraph 11. (Confidentiality), the Contractor will treat ITCILO Data as confidential and may neither disclose it nor make it available to any third-party except with the prior written authorization of the ITCILO.

10.3. **Compliance:** The Contractor confirms that it has a data protection policy in place that meets applicable legal requirements and that it will apply such a policy to ITCILO Data. The Contractor will implement technical and organisational measures to ensure appropriate protection of ITCILO Data, in conformity with industry standards (ISO/IEC 27001:2013 or equivalent). In addition, the Contractor will:

- 10.3.1. at its sole expense and risk, return, delete, or destroy all ITCILO Data, including data backups, upon written instruction of the ITCILO. The ITCILO will provide a reasonable period of time and take into account the Contractor's legitimate interests, as well as the termination or expiration date of the Contract;
- 10.3.2. process, retain or store ITCILO Data exclusively in countries that are a party to the 1947 Convention on the Privileges and Immunities of the Specialized Agencies and its Annex I relating to the International Labour Organization including the ITCILO, which is a controlled entity of the ILO, the ITCILO Statute, or that provide other arrangements that ensure adequate legal protection of the ITCILO; and
- 10.3.3. be liable for any resulting damages or penalties for its failure to comply with its obligations.

10.4. Data security:

- 10.4.1. Upon discovery of a data security breach, the Contractor will immediately notify the ITCILO and undertake at its sole expense to:
 - 10.4.1.1. propose immediate remedial actions (including containment);
 - 10.4.1.2. implement, as directed by the ITCILO, all necessary damage mitigation and remedial actions;
 - 10.4.1.3. where applicable, as directed by the ITCILO, restore the ITCILO's and end-users' access; and
 - 10.4.1.4. keep the ITCILO informed of its progress.
- 10.4.2. The Contractor, at its sole expense, will cooperate fully with any ITCILO investigation, remediation steps, and response to a data security breach.

11. Confidentiality

11.1. **Confidential information:** The Contract and any information identified as restricted or confidential that is delivered or disclosed by one Party (**Discloser**) to the other Party (**Recipient**) during the course of performance of the Contract will be treated as confidential and used solely for the purpose for which it was disclosed.

11.2. **Exclusions:** There will be no obligation of confidentiality or restriction on use, where the information:

- 11.2.1. is publicly available, or becomes publicly available, other than by an action or omission of the Recipient;
- 11.2.2. was already lawfully known to the Recipient prior to the performance of the Contract;
- 11.2.3. was received by the Recipient from a third-party not in breach of an obligation of confidentiality; or
- 11.2.4. is to be provided to another entity of the United Nations System or a multilateral development finance institution, including information relating to paragraph 4.8. (Performance issues) or the Contractor's failure to comply with the provisions of paragraph 1 2. (Responsible Business Practices).

11.3. **Disclosure:** The Recipient may disclose confidential information to the extent required by law or a regulatory body, provided that the Recipient will give the Discloser sufficient prior notice of the request in order to provide the Discloser with a reasonable opportunity from the receipt of the disclosure request, to take protective measures or such other action as may be appropriate before any such disclosure is made. Any such disclosure that is made in this context may not be deemed a waiver of the privileges and immunities of the ITCILO.

12. Responsible Business Practices

12.1. **Responsible business practices:** The ITCILO requires the Contractor and its Personnel to support and respect the protection of internationally proclaimed human rights (UN Guiding Principles on Business and Human Rights, available at https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf) and to observe the highest ethical standards throughout its supply chain, during the procurement process and the performance of the Contract. The ITCILO further requires that the Contractor and its Personnel, will neither use nor engage in any: threats of violence, verbal or psychological harassment or abuse. The Contractor expressly agrees to abide by the United Nations Supplier Code of Conduct (https://www.un.org/Depts/ptd/sites/www.un.org.Depts.ptd/files/files/attachment/page/pdf/unscc/conduct_english.pdf).

12.2. **Labour clauses:** The Contractor undertakes to respect, at all times and in all circumstances relevant to the performance of the Contract and in relation to all its Personnel, the following principles concerning international labour standards of the ILO:

- 12.2.1. the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as the protection of those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;
- 12.2.2. the prohibition of forced or compulsory labour in all its forms;
- 12.2.3. equal remuneration for men and women for work of equal value;
- 12.2.4. equality of opportunity and treatment in respect of employment and occupation without discrimination on the grounds of race, colour, sex (including pregnancy), religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of the Contract takes place, including but not limited to age, disability, HIV status, sexual orientation or gender identity;
- 12.2.5. the prohibition of the employment of children below fourteen (14) years of age or, if higher than fourteen (14), the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of the Contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher;
- 12.2.6. the prohibition of the employment of persons under the age of eighteen (18) for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;

12.2.7. the payment of wages in legal tender, at regular intervals no longer than one month, in full and directly to the workers concerned. The Contractor will keep an appropriate record of such payments. Deductions from wages are permitted only under conditions and to the extent prescribed by the applicable law, regulations or collective agreement, and the workers concerned must be informed of such deductions at the time of each payment;

12.2.8. the provision of wages, hours of work and other conditions of work not less favourable than the best conditions prevailing (i.e., as contained in: (i) collective agreements covering a substantial proportion of employers and workers; (ii) arbitration awards; or, (iii) applicable laws or regulations) for work of the same character performed in the trade or industry concerned in the area where work is carried out;

12.2.9. the need to ensure, so far as is reasonably practicable, that the workplaces, machinery, equipment and processes under their control are safe and without risk to health, and that the chemical, physical and biological substances and agent under their control are without risk to health when the appropriate measures of protection are taken; and provide, where necessary, adequate protective clothing and protective equipment to prevent, so far as is reasonably practicable, risk of accidents or of adverse effects to health; and

12.2.10. the provision of social security benefits, including the need to ensure that its Personnel are adequately insured against the consequences of the following risks: (i) illness, injury and death; and (ii) incapacity to work due to accident and sickness either during normal working hours or outside working hours.

12.3. Proscribed Practices and Prohibited Conduct: The Contractor and its Personnel certify that they have not and will not engage in Proscribed Practices or Prohibited Conduct during the procurement process and the performance of the Contract.

12.3.1. The ITCILO provides the following definitions of conduct or behaviour that constitute proscribed practices (**Proscribed Practices**):

12.3.1.1. "Fraud" or "fraudulent practice": any act or omission whereby an individual or entity knowingly misrepresents or conceals a fact:(i) in order to obtain an undue benefit or advantage or avoid an obligation for himself, herself, itself, or a third-party; and/or (ii) in such a way as to cause an individual or entity to act, or fail to act, to his, her or its detriment;

12.3.1.2. "Corruption" or "Corrupt practice": the offering, giving, receiving, or soliciting, directly or indirectly, anything of value to influence improperly the actions of another party;

12.3.1.3. "Coercion" or "Coercive practice": an act or omission that impairs or harms, or threatens to impair or harm, directly or indirectly, any party or the property of the party to improperly influence the actions of a party;

12.3.1.4. "Collusion" or "Collusive practice": an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party;

12.3.1.5. "Unethical practice": any conductor behaviour that entails an actual, potential, or perceived conflict of interest. This may include the receipt of gifts and hospitality, violation of post-employment provisions, or non-compliance with other published requirements of doing business with the ITCILO; and

12.3.1.6. "Obstruction" or "Obstructive practice": the deliberate destruction, falsification, alteration or concealing of evidence material to an investigation or making false statements to investigators in order to materially impede an investigation into allegations of the foregoing; and/or threatening, harassing, or intimidating another to prevent them from disclosing their knowledge of matters relevant to an investigation or from pursuing an investigation; or an act intended to materially impede the exercise of the ITCILO's inspection and audit rights.

12.3.2. The ITCILO provides the following definitions of conduct or behaviour that constitute prohibited conduct (**Prohibited Conduct**):

12.3.2.1. "Sexual exploitation" is any actual or attempted abuse of a position of vulnerability, differential power, or trust, for sexual purposes, including, but not limited to profiting monetarily, socially or politically from the sexual exploitation of another;

12.3.2.2. "Sexual abuse" is the actual or threatened physical intrusion of a sexual nature, whether by force or under unequal or coercive conditions;

12.3.2.3. Sexual activity with children (persons under the age of eighteen (**18**)) regardless of age of majority or age of consent locally. Mistaken belief in the age of a child is not an excuse; and

12.3.2.4. Exchange of money, employment, assistance, goods or services for sex, including sexual favours or other forms of humiliating, degrading or exploitative behaviour.

12.4. Conflict of interest: If at any stage of the procurement process or during Contract performance a conflict of interest arises, or appears likely to arise, including any situation in which the interests of the Contractor conflict with the interests of the ITCILO, or any situation in which any ITCILO official, employee or person under a contract with the ITCILO may have, or appears to have, an interest of any kind in the Contractor's business or any kind of economic or personal ties with the Contractor, then the Contractor will immediately notify the ITCILO in writing, setting out all relevant details. The Contractor will take such steps as the ITCILO may reasonably require to resolve or otherwise deal with the conflict to the satisfaction of the ITCILO.

12.5. Full disclosure:

12.5.1. The Contractor will immediately notify the ITCILO upon becoming aware of any Proscribed Practices, Prohibited Conduct, or suspicion thereof, by itself or its Personnel during the procurement process or the performance of the Contract.² The Contractor will take all appropriate measures to prohibit and prevent its

² ILO Office of Internal Audit and Oversight (IAO) at investigations@ilo.org

Personnel from engaging in Proscribed Practices or Prohibited Conduct, as well as to investigate allegations thereof, or to take corrective action when such a Proscribed Practice or Prohibited Conduct has occurred.

12.5.2. The Contractor further warrants that it is not the subject of any sanctions, or otherwise identified as ineligible by any government, supranational organization (e.g., European Union), another entity of the United Nations System or multilateral development finance institution. The Contractor will disclose to the ITCILO if it becomes subject to any sanction or temporary suspension during the term of the Contract. The Contractor recognizes that a breach of this provision constitutes a fraudulent practice.

12.6. **Terrorism:** The Contractor agrees to undertake all reasonable efforts to ensure that no funds received under the Contract are used, directly or indirectly, to provide support to individuals or entities associated with terrorism and that recipients of any funds provided by the ITCILO do not appear on the list established by the UN Security Council Resolutions 2253 and 2368 (UN ISIL (Da'esh) & Al-Qaida Sanctions List) (https://www.un.org/securitycouncil/sanctions/1267/aq_sanctions_list).

13. Force Majeure

13.1. Force Majeure:

13.1.1. Neither Party will be liable to the other Party for failure to perform its respective obligations, if such failure is as a result of an unforeseeable and irresistible event, act of nature (including fire, flood, earthquake, storm, hurricane, epidemic or other natural disaster), any act of war (whether declared or not), invasion, revolution, insurrection, terrorism, or any other acts of a similar nature or force, (**Force Majeure**) provided that such acts arise from causes beyond the control and without the fault or negligence of the invoking Party.

13.1.2. The defaulting Party will notify, as soon as possible after the occurrence of the Force Majeure event, the other Party in writing with full particulars of the Force Majeure event, including its likely duration, the estimated expenditures that will likely be incurred for the duration of the Force Majeure event, and any other conditions which threaten to interfere with the defaulting Party's performance of the Contract.

13.1.3. If either Party is rendered unable, in whole or in part, by reason of Force Majeure to perform its obligations then that Party will have the right to:

13.1.3.1. suspend the Contract or reduce activities, scope or services. Such suspension will be in effect until further notice or for such a period as to be agreed upon by the Parties and will be reviewed on an ongoing basis; or

13.1.3.2. terminate the Contract.

13.1.4. In the event of disagreement as to the level of reduction, suspension or termination, the ITCILO's decision will prevail.

13.2. **Notice of Force Majeure:** If notice is not received by a Party in accordance with paragraph 13.1.2., the Party who fails to notify of the Force Majeure event will be liable for damages resulting from such non-receipt, except where the Force Majeure event also prevents transmission of the notice.

14. Termination or Suspension

14.1. **Termination or suspension by the ITCILO:** Without requiring prior adjudication or any other authorisation, the ITCILO may by written notice immediately terminate or suspend the Contract, in the event that:

14.1.1. the ITCILO becomes aware of any incident or allegation of infringement by the Contractor or its Personnel of any of its obligations contained in paragraphs 10. (Data Protection) or 12. (Responsible Business Practices);

14.1.2. the Contractor is found to have made a wilful or fraudulent misrepresentation in the making of or performance of the Contract, regardless of when the misrepresentation is discovered;

14.1.3. the ITCILO's activities are curtailed or terminated;

14.1.4. the ITCILO does not receive the necessary funds to cover the total value of the Contract;

14.1.5. the ITCILO receives a recommendation regarding public health, safety or the security level (e.g., issued by the World Health Organization, ITCILO Medical Service, UN Department of Safety and Security), as well as from competent authorities where the Contractor is to perform any of its obligations;

14.1.6. the Contractor is declared undesirable by the government where the Contractor is to perform any of its obligations; or

14.1.7. the Contractor becomes bankrupt, otherwise insolvent, or the ITCILO reasonably determines that the Contractor has become subject to a materially adverse change in its financial condition that threatens to substantially affect the ability of the Contractor to perform any of its obligations.

14.2. **Termination or suspension by either Party:** Without requiring prior adjudication or any other authorisation:

14.2.1. either Party may terminate the Contract in the event that the other Party fails to perform its obligations (other than those described in paragraph 14.1.) or to satisfy any guarantees or warranties it has made under the Contract and does not rectify such failure within thirty (30) days from receipt of a written notice from the invoking Party, or within another mutually agreed time frame; or

14.2.2. the Parties may agree on a temporary suspension of the Contract, in whole or in part. The defaulting Party will take such steps as the invoking Party may reasonably require to rectify the failure or otherwise deal with the conflict to the satisfaction of the invoking Party.

14.3. **Consequences of termination or suspension:**

14.3.1. Upon receipt of notice of termination or suspension by the ITCILO and unless otherwise instructed by the ITCILO, the Contractor will:

14.3.1.1. take immediate steps to stop production of any Goods or bring any Services to a close in a prompt and orderly manner, will reduce expenses to a minimum and will not undertake any further obligations from the date of receipt of the notice of termination or suspension; and

14.3.1.2. deliver all completed or partially completed Goods or Services.

14.3.2. The ITCILO will only pay for those Goods delivered and Services provided to the ITCILO in accordance with the requirements of the Contract, if they were ordered, requested or otherwise provided prior to the Contractor's receipt of the notice of termination or suspension from the ITCILO.

14.3.3. In the event of termination or suspension pursuant to paragraphs 14.1.1., 14.1.2. or 14.2.1., the ITCILO reserves the right to require full or partial restitution of sums previously paid by it and impose sanctions as per the ITCILO applicable procedures.

15. Miscellaneous

15.1. **Change orders:** The ITCILO may, by written notification, increase or decrease the number of Goods or the scope of Services of the Contract provided the stage reached in the performance of the Contract so allows. If any such changes increase or decrease the cost of and/or the time required for the performance of any part of the Contract, an equitable adjustment will be made in the Contract's price or time schedule, or both, and the Contract will accordingly be amended. Any request for consultation or claim for adjustment under this paragraph will be asserted by the Contractor within thirty (30) days from the date of receipt of the ITCILO's change order.

15.2. **Amendments:** The Parties may by mutual agreement amend the Contract. Amendments will be effective only if in writing and when executed and delivered on behalf of the ITCILO and the Contractor by persons duly authorized to do so.

15.3. **Audit and investigation:** The Contractor and its Personnel will provide full and timely cooperation with ITCILO audit, evaluation, investigation, inspection, review, or other activity relating to any aspect of the Contract or the award thereof. Such cooperation includes the Contractor's obligation to make available its premises, Personnel and any relevant documentation and records for such purposes at reasonable times and on reasonable conditions during the term of the Contract and for a period of ten (10) years from the termination or expiration of the Contract. In the event of merger or acquisition, the Contractor will ensure that relevant documentation and records will be transferred to the purchasing/resulting entity or, if dissolved, the Contractor will inform the ITCILO in writing and provide it with the opportunity to retain relevant documentation and records.

15.4. **Monitoring:** The Contractor and its Personnel will provide full and timely cooperation with ITCILO monitoring relating to any aspect of the Contract or the award thereof. Such cooperation includes the Contractor's obligation to make available its premises, Personnel and any relevant documentation for such purposes at reasonable times and on reasonable conditions during the term of the Contract.

15.5. **Non-waiver of rights:** Termination of the Contract in whole or in part by a Party or the failure by either Party to exercise any rights available to it, will not affect the accrued rights or claims and liabilities of either Party to the Contract.

15.6. **Survival:** The obligations contained in paragraphs 1.4. (Restrictions in advertising); 6.1 (Warranty of Goods); 6.2 (Warranty of Services); 7.1. (Indemnification); 7.2. (Insurance); 9. (Intellectual Property); 10. (Data Protection); 11. (Confidentiality); and 15.3. (Audit and investigation) survive the termination or expiration of the Contract.

15.7. **Severability:** The invalidity or unenforceability in whole or in part of any provision or part of the Contract will not affect the validity or enforceability of the rest of that provision and/or any other provisions of the Contract.

15.8. **Limitation on actions:** Irrespective of their nature, any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof (other than obligations enumerated in paragraph 15.6.) must be asserted within six (6) months after the termination or expiration of the Contract.

16. Settlement of Disputes

16.1. **Amicable settlement:** The Parties will use their best efforts to amicably settle any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof by direct informal negotiations, including, where agreed, by referral, to an executive level of authority within the Parties. Where the Parties wish to seek such an amicable settlement through conciliation, the conciliation will take place in accordance with the Conciliation Rules then prevailing of the United Nations Commission on International Trade Law (**UNCITRAL**, <https://uncitral.un.org/en/texts>) or according to such other procedure as may be agreed between the Parties in writing.

16.2. **Arbitration:** Unless settled amicably under paragraph 16.1., within sixty (60) days following receipt by one Party of the other Party's written request, any dispute, controversy or claim arising out of the Contract, or the breach, termination or invalidity thereof, will at either Party's request be settled by arbitration in accordance with the UNCITRAL Arbitration Rules then prevailing. In addition:

16.2.1. the place of arbitration will be Turin, Italy;

16.2.2. the decisions of the arbitral tribunal will be based on general principles of international commercial law;

16.2.3. the arbitral tribunal will have no authority to award punitive damages; and

16.2.4. the Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim arising out of the Contract, or the breach, termination or invalidity thereof.

16.3. **Language:** The conciliation and arbitration proceedings will be conducted in the language in which the Contract is signed provided that it is one of the three working languages of the ITCILO (English, French and

Spanish). In the event the Contract is in a language other than English, French or Spanish, the conciliation or the arbitration proceedings will be conducted in English, French or Spanish.
