



TERMS AND CONDITIONS APPLICABLE TO MANEPO CONTRACTS FOR SERVICES

1. THE PARTIES

1.1. LEGAL STATUS OF THE PARTIES: The Malawi Network of Older Persons' Organisations (MANEPO), and the Contractor (referred to individually as a "Party" and together as the "Parties") have the following legal status: 1.1.1. MANEPO 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 Constitution of MANEPO. 1.1.2. The Contractor is an independent contractor. 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.

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 MANEPO Contracts for Services (Annex 1); and 2.1.2.3. Any other document explicitly listed in the Purchase Order/Contract Document and attached to it (i.e., Annex 2, 3, 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.

2.2. 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: MANEPO may 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:

MANEPO Procurement Division, P.O. box 51408, Limbe, Malawi.

3. PRICE AND PAYMENT

3.1. PRICE AND CURRENCY: The price and currency specified in the Contractor's offer are firm and not subject to revision. MANEPO's financial liability under the Contract is restricted to the price and currency indicated in the Purchase Order/Contract Document.

3.2. PAYMENT: Upon receipt of the Contractor's written invoice and any related supporting documentation, MANEPO will effect payment, normally within thirty (30) days. The written invoice will be sent to the addressee specified in the Purchase Order/Contract Document and will contain the: 3.2.1. number of the Purchase Order/Contract Document that it relates to; 3.2.2. invoiced amount (without the rounding of currency decimals and exclusive of VAT, duties or charges); and 3.2.3. date of the completion of Services. In no event will complete or partial payment by MANEPO, in and of itself, constitute acceptance of the Services.

3.3. TAX EXEMPTION: Invoices will be submitted inclusive of any amount representing taxes, duties or charges. Anything to the contrary, the Contractor will provide MANEPO with written evidence that payment of such taxes, duties or charges has an exemption.

4. PERFORMANCE

4.1. ITEMS FURNISHED BY THE CONTRACTOR: 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 performance of the Contractor's obligations under the Contract.

4.2. ITEMS FURNISHED BY MANEPO TO THE CONTRACTOR: Where goods and equipment (referred together as "Goods") are funded or provided by MANEPO to the Contractor to support the performance of the Contractor's obligations under the Contract, the following terms apply: 4.2.1. The Contractor acknowledges and agrees that MANEPO hereby disclaims any and all warranties regarding the functionality or installation of such Goods. The Contractor is solely responsible for the installation (including any personnel, tools, materials or other Goods necessary for installation), maintenance and functioning of all the Goods funded or provided by MANEPO under the Contract. 4.2.2. The Contractor will promptly report to MANEPO each loss, damage or theft of such Goods. 4.2.3. Title to the Goods that may be funded or provided by MANEPO the Contractor will be retained by MANEPO. The Contractor will not cause or permit any lien, claim or other encumbrance to be attached to any or all such Goods, or to any other item that is the subject matter of the Contract. 4.2.4. Upon the termination or expiration of the Contract, all such Goods will be returned to MANEPO in the same condition as when delivered to the Contractor, excluding normal wear and tear. The return of such Goods, or other disposal as MANEPO 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 Goods. The Contractor will compensate MANEPO for actual costs of any loss of, damage to or deterioration of such Goods that is beyond normal wear and tear.

4.3. INSTALLATION, MAINTENANCE, TRAINING: Where installation, maintenance (ongoing or as specified in the Purchase Order/Contract Document) or training is required, the following terms apply: 4.3.1. 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. 4.3.2. All costs related to the installation, maintenance or training will be borne by the Contractor. 4.3.3. MANEPO and the Consignee will be permitted to monitor the installation or maintenance work, as well as to oversee the training. 4.3.4. In addition, where training is required the Contractor will train any persons identified MANEPO or the Consignee in the installation, operation, maintenance, etc. of the Services described in the Contract.

4.4. ACCESS: If some or all of the contractual obligations will be performed on MANEPO premises, MANEPO will facilitate access to its premises in line with requirements for such performance. The Contractor will comply with MANEPO security requirements and any other relevant MANEPO rules, regulations and guidelines while on MANEPO premises, as well as with the instructions given by designated MANEPO officials.

4.5. RESPONSIBILITY FOR PERSONNEL: 4.5.1. 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. 4.5.2. 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 under the Contract. 4.5.3. Without prejudice to any other right or remedy available under the Contract, MANEPO reserves the right to request at any time, in writing, the withdrawal or replacement of any of the Contractor's Personnel and such request will not be unreasonably refused by the Contractor. 4.5.4. Each Party is solely responsible for all claims arising out of or relating to the engagement of its respective Personnel. 4.5.5. All expenditures related to the assignment of the Contractor's Personnel, including allowances, insurance, cost of travel arrangements and local transport will be borne by the Contractor. All expenditures related to the assignment of MANEPO's Personnel, including allowances, insurance, cost of travel arrangements and local transport will be borne by MANEPO.

4.6. INSURANCE: 4.6.1. The Contractor, for the duration of the Contract, any extension thereof or any period following any termination of the Contract and reasonably adequate to deal with losses, will insure its Personnel against the consequences of the following risks: 4.6.1.1. illness, injury and death; and 4.6.1.2. incapacity to work due to accident and sickness either during normal working hours or outside working hours. 4.6.2. Time lost as a result of the occurrence of the risks identified in subparagraphs 4.6.1.1 or 4.6.1.2 will not be chargeable to MANEPO. 4.6.3. The Contractor for the duration of the Contract, any extension thereof or any period following any termination of the Contract and reasonably adequate to deal with losses, warrants that it is insured with a coverage for a sufficient amount for the use of any vehicles, boats, airplanes or other transportation vehicles and equipment, whether or not owned by the Contractor, as well as that it carries comprehensive civil liability insurance with regard to third-parties, including MANEPO and its Personnel, in respect of physical injury, damage to property or theft, as well as the direct or indirect effects thereof, including the unavailability of premises and loss of production. 4.6.4. Where required by MANEPO and as specified in the Purchase Order/Contract Document (except for the workers' compensation insurance or any self-insurance program maintained by the Contractor and approved by MANEPO), the Contractor's insurance policies will: 4.6.4.1. name MANEPO as an additional insured under the liability policy/policies, including, if required, as a separate endorsement under the Contractor's policy/policies; 4.6.4.2. include a waiver of subrogation of the Contractor's insurance carrier's rights against MANEPO; and 4.6.4.3. provided that MANEPO will receive written notice from the Contractor's insurance carrier not less than thirty (30) days prior to any cancellation or material change of coverage. 4.6.5. The Contractor will take out any other insurance required by MANEPO and as specified in the Purchase Order/Contract Document. 4.6.6. Upon written request by MANEPO, the Contractor will provide MANEPO with a copy of the general and specific conditions of the insurance policy/policies required under the Contract.

4.7. INDEMNIFICATION: 4.7.1. The Contractor is solely responsible for any claim or damage resulting from the negligence, acts, or omissions of its Personnel. 4.7.2. The Contractor will indemnify and hold MANEPO harmless from and against any direct or indirect responsibilities, complaints, claims (including intellectual

property rights infringement), suits, judgments, damages and losses, including costs, fees and related expenses, in respect of any physical injury, damage to property, theft, or economic or other prejudice suffered by MANEPO, its Personnel or third-parties which may result from the performance of the Contractor's obligations under the Contract or the Contractor's acts or omissions or those of the Contractor's Personnel.

4.7.3. The Contractor will immediately notify MANEPO upon becoming aware of any direct or indirect responsibilities, complaints, claims (including intellectual property rights infringement), suits, judgments, damages and losses, including costs, fees and related expenses, in respect of any physical injury, damage to property, theft, or economic or other prejudice suffered by MANEPO or which could adversely affect MANEPO.

5. ASSIGNMENT AND SUBCONTRACTING

5.1. 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 MANEPO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, will not be binding on MANEPO.

5.2. 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 MANEPO of the subcontractor selected. The authorization and approval by MANEPO of such a subcontractor does not relieve the Contractor of any of its obligations under the Contract and the Contractor is solely responsible for the Services provided by a subcontractor in the framework of the Contract, including their quality. The Contractor, to the same extent as for its own Personnel, will be liable for a subcontractor and its Personnel who are performing any part of the Contractor's obligations under the Contract. The terms of any subcontract will be subject to and be in conformity with the provisions of the Contract. Except with the prior written authorization to subcontract and the approval of MANEPO 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 the Contract, or of any of the rights, claims or obligations under the Contract. The provisions of this paragraph apply to any subcontractor who, in turn, requires the services of a subcontractor.

6. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

6.1. PROPRIETARY ITEMS AND INTELLECTUAL PROPERTY RIGHTS: 6.1.1. All documents (including drawings, estimates, manuscripts, maps, plans, records, reports, recommendations) and other proprietary items (including data, devices, gauges, jigs, mosaics, parts, patterns, photographs, samples, and software) (jointly referred to as Proprietary Items), either developed by the Contractor or its Personnel in connection with the Contract or furnished to the Contractor by or on behalf of MANEPO to support the performance of the Contractor's obligations under the Contract, are the exclusive property of MANEPO; and, will be used by the Contractor and its Personnel solely for the purposes of the Contract. 6.1.2. All intellectual property rights and all other proprietary rights (including copyrights, patents, trademarks, source codes, products, processes, inventions, ideas, know-how) with regard to any materials (jointly referred to as Intellectual Property), either developed by the Contractor or its Personnel in connection with the Contract or furnished to the Contractor by or on behalf of MANEPO to support the performance of the Contractor's obligations under the Contract, are the exclusive property MANEPO; and, will be used by the Contractor and its Personnel solely for the purposes of the Contract. 6.1.3. During the course of development, Proprietary Items and Intellectual

Property developed or utilized by or furnished to the Contractor will be made available for use and inspection by MANEPO, upon request at reasonable times and in reasonable places. 6.1.4. Such Proprietary Items and Intellectual Property will be delivered only to MANEPO authorized officials on completion of the Contract. 6.1.5. The Contractor will disclose, throughout its performance, to MANEPO's authorized officials full particulars of all source codes, products, processes, inventions, ideas, know-how, documents and any other materials developed or conceived by the Contractor, alone or jointly, in connection with the Contract. 6.1.6. At the request of MANEPO, the Contractor will take all necessary steps to execute all necessary documents and generally assist MANEPO in securing intellectual property rights and all other proprietary rights in compliance with the requirements of applicable law. 6.1.7. To the extent that any Intellectual Property due to MANEPO under paragraph 6.1.2 includes any intellectual property: 6.1.7.1. of the Contractor that: (i) pre-existed the performance by the Contractor of its obligations under the Contract; or (ii) it may develop or acquire, or that may have been developed or acquired, independently of the performance of the Contractor's obligations under the Contract; or 6.1.7.2. of a third-party; the Contractor grants to MANEPO a perpetual, royalty-free license to make unrestricted use of such intellectual property. MANEPO will not claim any ownership interest in the intellectual property described in subparagraphs 6.1.7.1 or 6.1.7.2. 6.1.8. The Contractor undertakes to obtain, at its own expense, permission to use any third-party protected rights that are necessary for the performance of the Contract and, if requested, provide MANEPO with evidence of such permission. 6.1.9. In the event that any Proprietary Items or Intellectual Property provided to MANEPO by the Contractor are for some reason enjoined or found to infringe any rights of a third-party, or in the event of a settlement, are enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, will promptly: 6.1.9.1. procure for MANEPO the unrestricted right to continue using such Proprietary Items and Intellectual Property provided to MANEPO; 6.1.9.2. replace or modify the Proprietary Items and Intellectual Property provided to MANEPO, or part thereof, with the equivalent or better Proprietary Items and Intellectual Property, or part thereof, that are non-infringing; or, 6.1.9.3. refund to MANEPO the full price paid for the right to have or use such Proprietary Items and Intellectual Property or part thereof.

6.2. CONFIDENTIAL NATURE OF AND RESPONSIBILITY FOR PROPRIETARY ITEMS, INTELLECTUAL PROPERTY AND OTHER INFORMATION:

6.2.1. Unless otherwise made public with the authorization of MANEPO, Proprietary Items, Intellectual Property and other information, irrespective of what form they are, developed, collected, known, marked or received by the Contractor, will be treated by the Contractor as confidential and be used only for the purposes of the Contract. 6.2.2. The Contractor will not communicate at any time to any other person, government or entity external to MANEPO, any Proprietary Items, Intellectual Property or other information known by reason of its association with MANEPO, which has not been made public, except with the authorization of MANEPO; nor will the Contractor at any time use such information for private advantage or in any manner prejudicial to or incompatible with the interests of MANEPO. Where the Contractor is required by law to disclose such Proprietary Items, Intellectual Property or other information, it will give MANEPO sufficient prior notice of the request to disclose in order to allow MANEPO to have a reasonable opportunity to take protective measures or such other action as may be appropriate. 6.2.3. The Contractor will be responsible for such Proprietary Items, Intellectual Property and other information. In case of loss of or damage to any Proprietary Items, Intellectual Property or other information the Contractor may be required to: 6.2.3.1. replace or repair the lost or damaged Proprietary Items, Intellectual Property or other information; or 6.2.3.2. provide compensation to MANEPO for the cost of replacing or repairing the lost or damaged Proprietary Items, Intellectual Property or other information.

6.3. PUBLICITY AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL: 6.3.1. The Contractor may neither disclose the terms and conditions of the Contract nor advertise or otherwise make public the fact that it is a Contractor to MANEPO. 6.3.2. The Contractor may not use or reproduce the name, emblem or the official seal of MANEPO, in connection with the Contractor's business or otherwise. 6.3.3. In reporting its procurement activities, MANEPO may publish (e.g., on the internet) the Contractor's name and amount of the Contract.

7. ETHICAL CONDUCT

7.1. PERSONNEL NOT TO BENEFIT: 7.2.1. **MANEPO** requires bidders and contractors to observe the highest ethical standards during the procurement process and the execution of contracts. In order to ensure the respect of these obligations, MANEPO provides the following definitions: 7.2.1.1. **"fraudulent practice"** is any act or omission, including a misrepresentation, that knowingly or recklessly misleads, or attempts to mislead, another to obtain a financial or other benefit or to avoid an obligation; 7.2.1.2. **"corrupt practice"** is the offering, giving, receiving or soliciting, directly or indirectly, of any advantage, in order to influence improperly the actions of another; 7.2.1.3. **"conflict of interest"** is a situation that gives rise to an actual, potential or perceived conflict between the interests of one party and another; 7.2.1.4. **"collusive practice"** is any conduct or arrangement between two or more bidders or contractors, designed to achieve an improper purpose, including to influence improperly the actions of another or to set prices at an artificial level or in a non-competitive manner; 7.2.1.5. **"coercive practice"** is impairing or harming, or threatening to impair or harm, directly or indirectly, another or the property of another to influence improperly the actions of another. 7.2.2. The Contractor will not (and will ensure that its Personnel do not) place itself in a position that may, or does, give rise to a conflict between its interests and MANEPO's interests during the procurement process or the execution of the Contract. 7.2.3. If during any stage of the procurement process a conflict of interest arose or during contract execution a conflict of interest arises, or appears likely to arise, the Contractor will immediately notify MANEPO in writing, setting out all relevant details, including any situation in which the interests of the Contractor conflict with the interests of MANEPO, or in any situation in which any MANEPO official, employee or person under contract with MANEPO 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. The Contractor will take such steps as MANEPO may reasonably require to resolve or otherwise deal with the conflict to the satisfaction of MANEPO. 7.2.4. Without prejudice to any other right or remedy available under the Contract, MANEPO reserves the right to disqualify the Contractor for a specified or indefinite period from participating in the procurement process of MANEPO or contracting with MANEPO, if it is shown that the Contractor has, directly or indirectly, employed fraudulent, corrupt, collusive or coercive practices or failed to disclose a conflict of interest.

8. FULL DISCLOSURE

8.1. FULL DISCLOSURE: The Contractor warrants that it has made and will make full and proper disclosure to MANEPO of all relevant information relating to its business activities, financial condition and ownership, prior to entering into this Contract and for its duration.

9. DELAY, FORCE MAJEURE AND LIQUIDATED DAMAGES

9.1. DELAY: 9.1.1. Should the Contractor encounter conditions that do not constitute Force majeure and which impede or are likely to impede timely performance of the Contract (Delay), the Contractor will

immediately notify MANEPO in writing with full particulars of the delay, including its likely duration, and its cause. At MANEPO's request, the Contractor and MANEPO will consult as soon as practicable after receipt of such notice, to evaluate any available means of mitigation or appropriate remedies provided under the Contract. 9.1.2. In addition to any other right or remedy available under the Contract, upon receiving notice of Contractor's delay (or likely delay) in performance, MANEPO will have the right to: 9.1.2.1. suspend the Contract, in whole or in part, and notify the Contractor not to proceed further with its performance which has been subject to (or will be subject to) delay; 9.1.2.2. withhold and/or deduct payment to the Contractor for the portion of the Contract subject to delay; and 9.1.2.3. procure all or part of the Services which the Contractor fails to provide in a timely manner. 9.1.3. Without prejudice to any other right or remedy available under the Contract, the Contractor will be liable for any increase in the price payable by MANEPO resulting from the procurement of the Services from other sources and MANEPO may apply such additional costs incurred, by deduction or otherwise, against future amounts owed by MANEPO to the Contractor. 9.1.4. Upon receipt of notice of any decision by MANEPO to suspend the Contract under subparagraph 9.1.2.1 and with respect to the suspended portion of the Contract, the Contractor will take immediate steps to reduce expenses to a minimum and will not undertake any further obligations; provided, however, that MANEPO and the Contractor will continue performance of the Contract to the extent that it is not suspended or cancelled.

9.2. FORCE MAJEURE: 9.2.1. 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. 9.2.2. 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. 9.2.3. Without prejudice to any other right or remedy available under the Contract, if either Party is rendered unable, in whole or in part, by reason of Force Majeure to perform its obligations and meet its responsibilities under the Contract and where the Force Majeure event exists beyond sixty (60) days then that Party will have the right to suspend or terminate the Contract with a period of written notice of seven (7) days.

9.3. NOTICE OF DELAY AND FORCE MAJEURE: If notice is not received by a Party in accordance with paragraphs 9.1.1 or 9.2.2, the Party who fails to notify of the Delay or Force Majeure event will be liable for damages resulting from such non-receipt, except where the Delay or Force Majeure event also prevents transmission of the notice.

9.4. LIQUIDATED DAMAGES: Without prejudice to any other right or remedy available under the Contract, the Parties agree that if the Contractor breaches the Contract, including a delay in performance of the Contractor's obligations under the Contract, it will be impractical or difficult to quantify the damages suffered by MANEPO. The Parties, therefore, agree that in the event of such a breach by the Contractor, the Contractor will pay to MANEPO, 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. Each Party acknowledges and agrees that the liquidated damages amount specified herein are intended to reasonably compensate MANEPO and not intended to punish the Contractor.

Without prejudice to any other right or remedy available under the Contract, MANEPO reserves the right to recover such liquidated damages by deduction or otherwise, against future amounts owed by MANEPO to the Contractor.

10. TERMINATION

10.1. TERMINATION BY MANEPO: 10.1.1. Without prejudice to any other right or remedy available under the Contract and without the authorisation of a court or any other authorisation, MANEPO may terminate the Contract immediately by written notice in the event that the Contractor: 10.1.1.1. is found to have made any material or fraudulent misrepresentation in the making of or performance of the Contract regardless of when the misrepresentation is discovered; 10.1.1.2. becomes bankrupt, otherwise insolvent, or MANEPO 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 under the Contract; 10.1.1.3. fails to perform contractual obligations or to satisfy any guarantees or warranties it has made under the Contract and does not rectify such failure within sixty (60) days following receipt of a written notice by MANEPO; 10.1.1.4. is declared undesirable by the government where the Contractor is to perform any of its obligations under the Contract. 10.1.2. Upon receipt of notice of termination by MANEPO, the Contractor will take immediate steps to 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 notice of termination. 10.1.3. If the Contract should be terminated by MANEPO, MANEPO will make all payments which may be due up to the effective date of termination for any Services satisfactorily delivered or performed and accepted by MANEPO.

10.2. TERMINATION BY THE CONTRACTOR: 10.2.1. Without prejudice to any other right or remedy available under the Contract and without the authorisation of a court or any other authorisation, the Contractor may terminate the Contract immediately by written notice in the event that MANEPO: 10.2.1.1. fails to make payments which are due under the Contract and MANEPO does not rectify such failure within a period of sixty (60) days after receipt of the Contractor's written notice of default; or 10.2.1.2. fails in its contractual obligations so as to make it unreasonable for the Contractor to proceed with the performance of its obligations under the Contract and MANEPO does not rectify such failure within a period of sixty (60) days after receipt of the Contractor's written notice of default.

11. WARRANTY

11.1. WARRANTY OF SERVICES: 11.1.1. The Contractor warrants that any Services provided in accordance with the Contract will meet the specifications, timeframes and related requirements set forth in the Contract. All materials and workmanship utilized in performing the Services under the Contract will be of the respective kind(s) described in the Contract and free from defects. Materials not conforming to the specifications in the Contract will not be used in performance of the Services without prior written approval of MANEPO. 11.1.2. 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. 11.1.3. If any defect or failure in the Services cannot be rectified by remedial measures within the period agreed by MANEPO and the Contractor, the Contractor will be considered to be in default and in addition to exercising any suspension or termination rights set forth in the Contract, MANEPO has the right to independently replace

or repair the Services and the Contractor will be obligated to reimburse MANEPO for all the additional costs so incurred, including by deduction or otherwise, against future amounts owed by MANEPO to the Contractor.

12. MISCELLANEOUS

12.1. CHANGE ORDERS: MANEPO may, by written notification, increase or decrease 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) working days from the date of receipt of MANEPO's change order.

12.2. 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 MANEPO and the Contractor by persons duly authorized to do so.

12.3. 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.

12.4. SURVIVAL: The obligations contained in paragraphs 4.6 (Insurance); 4.7 (Indemnification); 6.1 (Proprietary Items and Intellectual Property Rights); 6.2 (Confidential Nature of and Responsibility for Proprietary Items, Intellectual Property and Other Information); 6.3 (Publicity and Use of the Name, Emblem or Official Seal); and 11.1 (Warranty of Services) survive the termination or expiration of the Contract.

12.5. 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 12.4) must be asserted within six (6) months after the termination or expiration of the Contract.

13. SETTLEMENT OF DISPUTES

13.1. 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.

13.2. ARBITRATION: Unless settled amicably under paragraph 13.1, within sixty (60) days, after 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 be settled by arbitration.

13.3. LANGUAGE: The conciliation and the arbitration proceedings will be conducted in the language in which the Contract is signed.