



The Federal Government of Somalia

Contract for Goods

Supply and Delivery of Non-perishable Foodstuff (SNA)– Lot 1 (12 April)

Contract No. FGS/MOF/ICB/2020/0060

Between

Ministry of Defense

and

United Group of Company

Dated: 25th March, 2021

Section VIII - General Conditions of Contract

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Section VIII. General Conditions of Contract

1. Definitions

1.1 The following words and expressions shall have the meanings hereby assigned to them:

- (a) "Contract" means the Contract Agreement entered into between the Procuring Entity and the Supplier, together with the Contract Documents referred to therein, including all attachments, appendices, and all documents incorporated by reference therein.
- (b) "Contract Documents" means the documents listed in the Contract Agreement, including any amendments thereto.
- (c) "Contract Price" means the price payable to the Supplier as specified in the Contract Agreement, subject to such additions and adjustments thereto or deductions therefrom, as may be made pursuant to the Contract.
- (d) "Completion" means the fulfilment of the Related Services by the Supplier in accordance with the terms and conditions set forth in the Contract.
- (e) "Day" means calendar day.
- (f) "GCC" means the General Conditions of Contract.
- (g) "Goods" means all of the commodities, raw material, machinery and equipment, and/or other materials that the Supplier is required to supply to the PE under the Contract.
- (h) FGS means the Federal Government of Somalia.
- (i) "Procuring Entity" or "PE" means the entity purchasing the Goods and Related Services, as specified in the SCC.
- (j) "Related Services" means the services incidental to the supply of the goods, such as insurance, installation,

training and initial maintenance and other such obligations of the Supplier under the Contract.

(k) "SCC" means the Special Conditions of Contract.

(l) "Subcontractor" means any person, private or government entity, or a combination of the above, to whom any part of the Goods to be supplied or execution of any part of the Related Services is subcontracted by the Supplier.

(m) "Supplier" means the person, private or government entity, or a combination of the above, whose bid to perform the Contract has been accepted by the PE and is named as such in the Contract Agreement.

(n) "The Project Site," where applicable, means the place named in the SCC.

2. Contract Documents

2.1 Subject to the order of precedence set forth in the Contract Agreement, all documents forming the Contract (and all parts thereof) are intended to be correlative, complementary, and mutually explanatory. The Contract Agreement shall be read as a whole.

3. Fraud and Corruption

3.1 The FGS requires compliance with the Public Procurement Concessions and Disposal Act ("PPCDA") Anti-Corruption Guidelines and its prevailing sanctions policies and procedures as set forth in Appendix to the GCC.

3.2 The PE requires the Supplier to disclose any commissions or fees that may have been paid or are to be paid to agents or any other party with respect to the Bidding process or execution of the Contract. The information disclosed must include at least the name and address of the agent or other party, the amount

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and currency, and the purpose of the commission, gratuity or fee.

4. Interpretation

4.1 If the context so requires it, singular means plural and vice versa.

4.2 Incoterms

(a) Unless inconsistent with any provision of the Contract, the meaning of any trade term and the rights and obligations of parties thereunder shall be as prescribed by Incoterms **specified in the SCC**.

(b) The terms EXW, CIP, and other similar terms, when used, shall be governed by the rules prescribed in the current edition of Incoterms specified in the **SCC**.

4.3 Entire Agreement

The Contract constitutes the entire agreement between the PE and the Supplier and supersedes all communications, negotiations and agreements (whether written or oral) of the parties with respect thereto made prior to the date of Contract.

4.4 Amendment

No amendment or other variation of the Contract shall be valid unless it is in writing, is dated, expressly refers to the Contract, and is signed by a duly authorized representative of each party thereto.

4.5 Nonwaiver

(a) Subject to GCC Sub-Clause 4.5(b) below, no relaxation, forbearance, delay, or indulgence by either party in enforcing any of the terms and conditions of the Contract or the granting of time by either party to the other shall prejudice, affect, or restrict the rights of that party under

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the Contract, neither shall any waiver by either party of any breach of Contract operate as waiver of any subsequent or continuing breach of Contract.

- (b) Any waiver of a party's rights, powers, or remedies under the Contract must be in writing, dated, and signed by an authorized representative of the party granting such waiver, and must specify the right and the extent to which it is being waived.

4.6 Severability

If any provision or condition of the Contract is prohibited or rendered invalid or unenforceable, such prohibition, invalidity or unenforceability shall not affect the validity or enforceability of any other provisions and conditions of the Contract.

5. Language

- 5.1 The Contract as well as all correspondence and documents relating to the Contract exchanged by the Supplier and the PE, shall be written in the language specified in the **SCC**. Supporting documents and printed literature that are part of the Contract may be in another language provided they are accompanied by an accurate translation of the relevant passages in the language specified, in which case, for purposes of interpretation of the Contract, this translation shall govern.

6. Joint Venture, Consortium or Association

- 6.1 If the Supplier is a joint venture, consortium, or association, all of the parties shall be jointly and severally liable to the PE for the fulfilment of the provisions of the Contract and shall designate one party to act as a leader with authority to bind the joint venture, consortium, or association. The composition or the constitution

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of the joint venture, consortium, or association shall not be altered without the prior consent of the PE.

7. Eligibility

7.1 The Supplier and its Subcontractors shall have the nationality of an eligible country. A Supplier or Subcontractor shall be deemed to have the nationality of a country if it is a citizen or constituted, incorporated, or registered, and operates in conformity with the provisions of the laws of that country.

7.2 All Goods and Related Services to be supplied under the Contract shall have their origin in Eligible Countries. For the purpose of this Clause, origin means the country where the goods have been grown, mined, cultivated, produced, manufactured, or processed; or through manufacture, processing, or assembly, another commercially recognized article results that differs substantially in its basic characteristics from its components.

8. Notices

8.1 Any notice given by one party to the other pursuant to the Contract shall be in writing to the address specified in the **SCC**. The term "in writing" means communicated in written form with proof of receipt.

8.2 A notice shall be effective when delivered or on the notice's effective date, whichever is later.

9. Governing Law

9.1 The Contract shall be governed by and interpreted in accordance with the laws of Federal Government of Somalia, unless otherwise specified in the **SCC**.

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9.2 Throughout the execution of the Contract, the Supplier shall comply with the import of goods and services prohibitions in the FGS when

(a) as a matter of law or official regulations, the FGS prohibits commercial relations with that country; or

(b) by an act of compliance with a decision of the United Nations Security Council taken under Chapter VII of the Charter of the United Nations, the FGS prohibits any import of goods from that country or any payments to any country, person, or entity in that country.

10 Settlement of Disputes

10.1 The PE and the Supplier shall make every effort to resolve amicably by direct informal negotiation any disagreement or dispute arising between them under or in connection with the Contract.

10.2 If, after twenty-eight (28) days, the parties have failed to resolve their dispute or difference by such mutual consultation, then either the PE or the Supplier may give notice to the other party of its intention to commence arbitration, as hereinafter provided, as to the matter in dispute, and no arbitration in respect of this matter may be commenced unless such notice is given. Any dispute or difference in respect of which a notice of intention to commence arbitration has been given in accordance with this Clause shall be finally settled by arbitration. Arbitration may be commenced prior to or after delivery of the Goods under the Contract. Arbitration proceedings shall be conducted in accordance with the rules of procedure specified in the SCC.

10.3 Notwithstanding any reference to arbitration herein,

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- (a) the parties shall continue to perform their respective obligations under the Contract unless they otherwise agree; and
- (b) The PE shall pay the Supplier any monies due the Supplier.

11 Inspections and Audit by the FGS

11.1 Appendix to the General Conditions the Supplier shall permit and shall cause its subcontractors and sub consultants to permit, the FGS and/or persons appointed by the FGS to inspect the Site and/or the accounts and records relating to the performance of the Contract and the submission of the bid, and to have such accounts and records audited by auditors appointed by the FGS. The Supplier's and its Subcontractors' and sub consultants' attention is drawn to Sub-Clause 3.1 which provides, inter alia, that acts intended to materially impede the exercise of the FGS's inspection and audit rights constitute a prohibited practice subject to contract termination.

12. Scope of Supply

12.1 The Goods and Related Services to be supplied shall be as specified in the Schedule of Requirements.

13. Delivery and Documents

13.1 The Delivery of the Goods and Completion of the Related Services shall be in accordance with the Delivery and Completion Schedule specified in the Schedule of Requirements. The details of shipping and other documents to be furnished by the Supplier are specified in the SCC

14. Supplier's Responsibilities

14.1 The Supplier shall supply all the Goods and Related Services included in the Scope of Supply in accordance with in accordance with GCC Clause 12, and the Delivery and Completion Schedule, as per GCC Clause 13.

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15 Contract Price

15.1 Prices charged by the Supplier for the Goods supplied and the Related Services performed under the Contract shall not vary from the prices quoted by the Supplier in its bid, with the exception of any price adjustments authorized in the SCC.

16. Terms of Payment

16.1 The Contract Price, including any Advance Payments, if applicable, shall be paid as specified in the SCC.

16.2 The Supplier's request for payment shall be made to the PE in writing, accompanied by invoices describing, as appropriate, the Goods delivered and Related Services performed, and by the documents submitted pursuant to GCC 13 and upon fulfilment of all other obligations stipulated in the Contract.

16.3 Payments shall be made promptly by the PE, but in no case later than sixty (60) days after submission of an invoice or request for payment by the Supplier, and after the PE has accepted it.

16.4 The currencies in which payments shall be made to the Supplier under this Contract shall be those in which the bid price is expressed.

17. Taxes and Duties

17.1 For goods manufactured outside the FGS, the Supplier shall be entirely responsible for all taxes, stamp duties, license fees, and other such levies imposed outside the FGS.

17.2 For goods Manufactured within the FGS, the Supplier shall be entirely responsible for all taxes, duties, license fees, etc., incurred until delivery of the contracted Goods to the PE.

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17.3 If any tax exemptions, reductions, allowances or privileges may be available to the Supplier in the FGS, the PE shall use its best efforts to enable the Supplier to benefit from any such tax savings to the maximum allowable extent.

**18. Performance
Security**

18.1 If required as specified in the SCC, the Supplier shall, within twenty-eight (28) days of the notification of contract award, provide a performance security for the performance of the Contract in the amount **specified in the SCC**.

18.2 The proceeds of the Performance Security shall be payable to the PE as compensation for any loss resulting from the Supplier's failure to complete its obligations under the Contract.

18.3 The Performance Security shall be denominated in the currency of the Contract, or in a freely convertible currency acceptable to the PE and shall be in the form of a bank guarantee or an irrevocable letter of credit issued by a reputable bank located in FGS or abroad, acceptable to the PE, in the form provided in the bid documents.

18.4 The Performance Security shall be discharged by the PE and returned to the Supplier not later than twenty-eight (28) days following the date of Completion of the Supplier's performance obligations under the Contract, including any warranty obligations under the contract.

19. Copyright

19.1 The copyright in all drawings, documents, and other materials containing data and information furnished to the PE by the Supplier herein shall remain vested in the Supplier.

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**20. Confidential
Information**

20.1 The PE and the Supplier shall keep confidential and shall not, without the written consent of the other party hereto, divulge to any third party any documents, data, or other information furnished directly or indirectly by the other party hereto in connection with the Contract, whether such information has been furnished prior to, during or following completion or termination of the Contract. Notwithstanding the above, the Supplier may furnish to its Subcontractor such documents, data, and other information it receives from the PE to the extent required for the Subcontractor to perform its work under the Contract, in which event the Supplier shall obtain from such Subcontractor an undertaking of confidentiality similar to that imposed on the Supplier under GCC Clause 20.

20.2 The PE shall not use such documents, data, and other information received from the Supplier for any purposes unrelated to the contract. Similarly, the Supplier shall not use such documents, data, and other information received from the PE for any purpose other than the performance of the Contract.

20.3 The obligation of a party under GCC Sub-Clauses 20.1 and 20.2 above, however, shall not apply to information that:

- (a) The PE or Supplier need to share with the Bank or other institutions participating in the financing of the Contract;
- (b) Now or hereafter enters the public domain through no fault of that party;
- (c) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or

- (d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.4 The above provisions of GCC Clause 20 shall not in any way modify any undertaking of confidentiality given by either of the parties hereto prior to the date of the Contract in respect of the Supply or any part thereof.

20.5 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

20.6 The obligation of a party under GCC Sub-Clauses 20.1 above, however, shall not apply to information that:

- (a) The PE or Supplier need to share with the Administrative review board or appointed auditor/investigator or other institutions participating in the financing of the Contract;
- (b) Now or hereafter enters the public domain through no fault of that party;
- (c) Can be proven to have been possessed by that party at the time of disclosure and which was not previously obtained, directly or indirectly, from the other party; or
- (d) Otherwise lawfully becomes available to that party from a third party that has no obligation of confidentiality.

20.7 The provisions of GCC Clause 20 shall survive completion or termination, for whatever reason, of the Contract.

21. Subcontracting

21.1 The Supplier shall notify the PE in writing of all subcontracts awarded under the Contract if not already specified in the bid. Such notification, in the original bid or later shall not relieve the Supplier from any of its obligations, duties, responsibilities, or liability under the Contract.

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21.2 Subcontracts shall comply with the provisions of GCC Clauses 3 and 7.

**22. Specifications
and Standards**

22.1 Technical Specifications and Drawings

- (a) The Goods and Related Services supplied under this Contract shall conform to the technical specifications and standards mentioned in the Schedule of Requirements and, when no applicable standard is mentioned, the standard shall be equivalent or superior to the official standards whose application is appropriate to the Goods' country of origin.
- (b) The Supplier shall be entitled to disclaim responsibility for any design, data, drawing, specification or other document, or any modification thereof provided or designed by or on behalf of the PE, by giving a notice of such disclaimer to the PE.
- (c) Wherever references are made in the Contract to codes and standards in accordance with which it shall be executed, the edition or the revised version of such codes and standards shall be those specified in the Schedule of Requirements. During Contract execution, any changes in any such codes and standards shall be applied only after approval by the PE and shall be treated in accordance with GCC Clause 33.

**23. Packing and
Documents**

23.1 The Supplier shall provide such packing of the Goods as is required to prevent their damage or deterioration during transit to their final destination, as indicated in the Contract. During transit, the packing shall be sufficient to withstand, without limitation, rough handling and exposure to extreme temperatures, salt and

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precipitation, and open storage. Packing case size and weights shall take into consideration, where appropriate, the remoteness of the goods' final destination and the absence of heavy handling facilities at all points in transit.

23.2 The packing, marking, and documentation within and outside the packages shall comply strictly with such special requirements as shall be expressly provided for in the Contract, including additional requirements, if any, specified in the **SCC**, and in any other instructions ordered by the PE.

24. Insurance

24.1 Goods supplied under the Contract shall be fully insured against loss or damage incidental to manufacture or acquisition, transportation, storage, and delivery, in the manner specified in the **SCC**.

25. Transportation and Incidental Services

25.1 Unless otherwise specified in the **SCC**, responsibility for arranging transportation of the Goods shall be in accordance with the specified Incoterms.

25.2 The Supplier may be required to provide any or all of the following services, including additional services, if any, specified in SCC:

- (a) performance or supervision of on-site assembly and/or start-up of the supplied Goods;
- (b) furnishing of tools required for assembly and/or maintenance of the supplied Goods;
- (c) furnishing of a detailed operations and maintenance manual for each appropriate unit of the supplied Goods;

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- (d) performance or supervision or maintenance and/or repair of the supplied Goods, for a period of time agreed by the parties, provided that this service shall not relieve the Supplier of any warranty obligations under this Contract; and
- (e) Training of the PE's personnel, at the Supplier's plant and/or on-site, in assembly, start-up, operation, maintenance, and/or repair of the supplied Goods.

25.3 Prices charged by the Supplier for incidental services, if not included in the Contract Price for the Goods, shall be agreed upon in advance by the parties and shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

**26. Inspections and
Tests**

26.1 The Supplier shall at its own expense and at no cost to the PE carry out all such tests and/or inspections of the Goods and Related Services as are specified in the **SCC**.

26.2 The inspections and tests may be conducted on the premises of the Supplier or its Subcontractor, at point of delivery, and/or at the Goods' final destination, or in another place in the Country as specified in the **SCC**. Subject to GCC Sub-Clause 26.3, if conducted on the premises of the Supplier or its Subcontractor, all reasonable facilities and assistance, including access to drawings and production data, shall be furnished to the inspectors at no charge to the PE.

26.3 The PE or its designated representative shall be entitled to attend the tests and/or inspections referred to in GCC Sub-Clause 26.2, provided that the PE bear all of its own costs and

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expenses incurred in connection with such attendance including, but not limited to, all traveling and board and lodging expenses.

- 26.4 Whenever the Supplier is ready to carry out any such test and inspection, it shall give a reasonable advance notice, including the place and time, to the PE. The Supplier shall obtain from any relevant third party or manufacturer any necessary permission or consent to enable the PE or its designated representative to attend the test and/or inspection.
- 26.5 The PE may require the Supplier to carry out any test and/or inspection not required by the Contract but deemed necessary to verify that the characteristics and performance of the Goods comply with the technical specifications codes and standards under the Contract, provided that the Supplier's reasonable costs and expenses incurred in the carrying out of such test and/or inspection shall be added to the Contract Price. Further, if such test and/or inspection impedes the progress of manufacturing and/or the Supplier's performance of its other obligations under the Contract, due allowance will be made in respect of the Delivery Dates and Completion Dates and the other obligations so affected.
- 26.6 The Supplier shall provide the PE with a report of the results of any such test and/or inspection.
- 26.7 The PE may reject any Goods or any part thereof that fail to pass any test and/or inspection or do not conform to the specifications. The Supplier shall either rectify or replace such rejected Goods or parts thereof or make alterations necessary

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to meet the specifications at no cost to the PE, and shall repeat the test and/or inspection, at no cost to the PE, upon giving a notice pursuant to GCC Sub-Clause 26.4.

26.8 The Supplier agrees that neither the execution of a test and/or inspection of the Goods or any part thereof, nor the attendance by the PE or its representative, nor the issue of any report pursuant to GCC Sub-Clause 26.6, shall release the Supplier from any warranties or other obligations under the Contract.

**27. Liquidated
Damages**

27.1 Except as provided under GCC Clause 32, if the Supplier fails to deliver any or all of the Goods by the Date(s) of delivery or perform the Related Services within the period specified in the Contract, the PE may without prejudice to all its other remedies under the Contract, deduct from the Contract Price, as liquidated damages, a sum equivalent to the percentage specified in the SCC of the delivered price of the delayed Goods or unperformed Services for each week or part thereof of delay until actual delivery or performance, up to a maximum deduction of the percentage specified in those SCC. Once the maximum is reached, the PE may terminate the Contract pursuant to GCC Clause 35.

28. Warranty

28.1 The Supplier warrants that all the Goods are new, unused, and of the most recent or current models, and that they incorporate all recent improvements in design and materials, unless provided otherwise in the Contract.

28.2 Subject to GCC Sub-Clause 22.1(b), the Supplier further warrants that the Goods shall be free from defects arising from

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any act or omission of the Supplier or arising from design, materials, and workmanship, under normal use in the conditions prevailing in the country of final destination.

28.3 Unless otherwise specified in the **SCC**, the warranty shall remain valid for twelve (12) months after the Goods, or any portion thereof as the case may be, have been delivered to and accepted at the final destination indicated in the **SCC**, or for eighteen (18) months after the date of shipment from the port or place of loading in the country of origin, whichever period concludes earlier.

28.4 The PE shall give notice to the Supplier stating the nature of any such defects together with all available evidence thereof, promptly following the discovery thereof. The PE shall afford all reasonable opportunity for the Supplier to inspect such defects.

28.5 Upon receipt of such notice, the Supplier shall, within the period specified in the **SCC**, expeditiously repair or replace the defective Goods or parts thereof, at no cost to the PE.

28.6 If having been notified, the Supplier fails to remedy the defect within the period specified in the **SCC**, the PE may proceed to take within a reasonable period such remedial action as may be necessary, at the Supplier's risk and expense and without prejudice to any other rights which the PE may have against the Supplier under the Contract.

29. Patent Indemnity

29.1 The Supplier shall, subject to the PE's compliance with GCC Sub-Clause 29.2, indemnify and hold harmless the PE and its

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employees and officers from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the PE may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract by reason of:

- (a) the installation of the Goods by the Supplier or the use of the Goods in the country where the Site is located; and
- (b) The sale in any country of the products produced by the Goods.

Such indemnity shall not cover any use of the Goods or any part thereof other than for the purpose indicated by or to be reasonably inferred from the Contract, neither any infringement resulting from the use of the Goods or any part thereof, or any products produced thereby in association or combination with any other equipment, plant, or materials not supplied by the Supplier, pursuant to the Contract.

29.2 If any proceedings are brought or any claim is made against the PE arising out of the matters referred to in GCC Sub-Clause 29.1, the PE shall promptly give the Supplier a notice thereof, and the Supplier may at its own expense and in the PE's name conduct such proceedings or claim and any negotiations for the settlement of any such proceedings or claim.

29.3 If the Supplier fails to notify the PE within twenty-eight (28) days after receipt of such notice that it intends to conduct any

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such proceedings or claim, then the PE shall be free to conduct the same on its own behalf.

29.4 The PE shall, at the Supplier's request, afford all available assistance to the Supplier in conducting such proceedings or claim, and shall be reimbursed by the Supplier for all reasonable expenses incurred in so doing.

29.5 The PE shall indemnify and hold harmless the Supplier and its employees, officers, and Subcontractors from and against any and all suits, actions or administrative proceedings, claims, demands, losses, damages, costs, and expenses of any nature, including attorney's fees and expenses, which the Supplier may suffer as a result of any infringement or alleged infringement of any patent, utility model, registered design, trademark, copyright, or other intellectual property right registered or otherwise existing at the date of the Contract arising out of or in connection with any design, data, drawing, specification, or other documents or materials provided or designed by or on behalf of the PE.

**30 Limitation of
Liability**

- 30.1 Except in cases of criminal negligence or wilful misconduct,
- (a) the Supplier shall not be liable to the PE, whether in contract, tort, or otherwise, for any indirect or consequential loss or damage, loss of use, loss of production, or loss of profits or interest costs, provided that this exclusion shall not apply to any obligation of the Supplier to pay liquidated damages to the PE and
 - (b) the aggregate liability of the Supplier to the PE, whether under the Contract, in tort or otherwise, shall not exceed the total Contract Price, provided that this limitation shall not apply to the cost of repairing or replacing defective

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equipment, or to any obligation of the supplier to indemnify the PE with respect to patent infringement

**31. Change in
Laws and
Regulations**

31.1 Unless otherwise specified in the Contract, if after the date of 28 days prior to date of Bid submission, any law, regulation, ordinance, order or bylaw having the force of law is enacted, promulgated, abrogated, or changed in the country that subsequently affects the Delivery Date and/or the Contract Price, then such Delivery Date and/or Contract Price shall be correspondingly increased or decreased, to the extent that the Supplier has thereby been affected in the performance of any of its obligations under the Contract. Notwithstanding the foregoing, such additional or reduced cost shall not be separately paid or credited if the same has already been accounted for in the price adjustment provisions where applicable, in accordance with GCC Clause 15.

32. Force Majeure

32.1 The Supplier shall not be liable for forfeiture of its Performance Security, liquidated damages, or termination for default if and to the extent that its delay in performance or other failure to perform its obligations under the Contract is the result of an event of Force Majeure.

32.2 For purposes of this Clause, "Force Majeure" means an event or situation beyond the control of the Supplier that is not foreseeable, is unavoidable, and its origin is not due to negligence or lack of care on the part of the Supplier. Such events may include, but not be limited to, acts of the PE in its sovereign capacity, wars or revolutions, fires, floods, epidemics, quarantine restrictions, and freight embargoes.

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32.3 If a Force Majeure situation arises, the Supplier shall promptly notify the PE in writing of such condition and the cause thereof. Unless otherwise directed by the PE in writing, the Supplier shall continue to perform its obligations under the Contract as far as is reasonably practical, and shall seek all reasonable alternative means for performance not prevented by the Force Majeure event.

**33. Change Orders
and Contract
Amendments**

33.1 The PE may at any time order the Supplier through notice in accordance GCC Clause 8, to make changes within the general scope of the Contract in any one or more of the following:

- (a) Drawings, designs, or specifications, where Goods to be furnished under the Contract are to be specifically manufactured for the PE;
- (b) The method of shipment or packing;
- (c) The place of delivery; and
- (d) The Related Services to be provided by the Supplier.

33.2 If any such change causes an increase or decrease in the cost of, or the time required for, the Supplier's performance of any provisions under the Contract, an equitable adjustment shall be made in the Contract Price or in the Delivery/Completion Schedule, or both, and the Contract shall accordingly be amended. Any claims by the Supplier for adjustment under this Clause must be asserted within twenty-eight (28) days from the date of the Supplier's receipt of the PE's change order.

33.3 Prices to be charged by the Supplier for any Related Services that might be needed but which were not included in the Contract shall be agreed upon in advance by the parties and

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shall not exceed the prevailing rates charged to other parties by the Supplier for similar services.

33.4 Subject to the above, no variation in or modification of the terms of the Contract shall be made except by written amendment signed by the parties.

**34. Extensions of
Time**

34.1 If at any time during performance of the Contract, the Supplier or its subcontractors should encounter conditions impeding timely delivery of the Goods or completion of Related Services pursuant to GCC Clause 13, the Supplier shall promptly notify the PE in writing of the delay, its likely duration, and its cause. As soon as practicable after receipt of the Supplier's notice, the PE shall evaluate the situation and may at its discretion extend the Supplier's time for performance, in which case the extension shall be ratified by the parties by amendment of the Contract.

34.2 Except in case of Force Majeure, as provided under GCC Clause 32, a delay by the Supplier in the performance of its Delivery and Completion obligations shall render the Supplier liable to the imposition of liquidated damages pursuant to GCC Clause 26, unless an extension of time is agreed upon, pursuant to GCC Sub-Clause 34.1.

35. Termination

35.1 Termination for Default

- (a) The PE, without prejudice to any other remedy for breach of Contract, by written notice of default sent to the Supplier, may terminate the Contract in whole or in part:

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- (i) if the Supplier fails to deliver any or all of the Goods within the period specified in the Contract, or within any extension thereof granted by the PE;
 - (ii) if the Supplier fails to perform any other obligation under the Contract; or
 - (iii) if the Supplier, in the judgment of the PE has engaged in fraud and corruption, as defined in the Act, in competing for or in executing the Contract.
- (b) In the event the PE terminates the Contract in whole or in part, pursuant to the Act, the PE may procure, upon such terms and in such manner as it deems appropriate, Goods or Related Services similar to those undelivered or not performed, and the Supplier shall be liable to the PE for any additional costs for such similar Goods or Related Services.

35.1 Termination for Insolvency.

- (a) The PE may at any time terminate the Contract by giving notice to the Supplier if the Supplier becomes bankrupt or otherwise insolvent. In such event, termination will be without compensation to the Supplier, provided that such termination will not prejudice or affect any right of action or remedy that has accrued or will accrue thereafter to the PE.

35.3 Termination for Convenience.

- (a) The PE, by notice sent to the Supplier, may terminate the Contract, in whole or in part, at any time for its convenience. The notice of termination shall specify that termination is for the PE's convenience, the extent to which performance of the Supplier under the Contract is

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terminated, and the date upon which such termination becomes effective.

(b) The Goods that are complete and ready for shipment within twenty-eight (28) days after the Supplier's receipt of notice of termination shall be accepted by the PE at the Contract terms and prices. For the remaining Goods, the PE may elect:

- (i) To have any portion completed and delivered at the Contract terms and prices; and/or
- (ii) To cancel the remainder and pay to the Supplier an agreed amount for partially completed Goods and Related Services and for materials and parts previously procured by the Supplier.

36. Assignment

36.1 Neither the PE nor the Supplier shall assign, in whole or in part, their obligations under this Contract, except with prior written consent of the other party.

37. Export Restriction

37.1 Notwithstanding any obligation under the Contract to complete all export formalities, any export restrictions attributable to the PE, to the country of the PE, or to the use of the products/goods, systems or services to be supplied, which arise from trade regulations from a country supplying those products/goods, systems or services, and which substantially impede the Supplier from meeting its obligations under the Contract, shall release the Supplier from the obligation to provide deliveries or services. Termination of the Contract on this basis shall be for the PE's convenience.

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APPENDIX TO GENERAL CONDITIONS

Fraud and Corruption

(Text in this Appendix shall not be modified)

All parties must observe the highest ethical standards during procurement process and contract execution. In this context, any corrupt, fraudulent, collusive, coercive, fraud or obstructive actions taken by public officers, bidders, suppliers, contractors, and their subcontractors and consultants for undue advantage are prohibited.

In pursuance of this policy, and for the purposes of this provision, the terms are defined as follows:

- a. *Corruption* is the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence improperly the actions of another party.
- b. *Fraud* is any act or omission, including a misrepresentation, that knowingly or recklessly misleads or attempts to mislead a party to obtain a financial or other benefit or to avoid an obligation.
- c. *Collusion* is an arrangement between two or more parties designed to achieve an improper purpose, including influencing improperly the actions of another party.
- d. *Coercion* is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party.
- e. *Obstruction* is deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statements to investigators (auditor general office reports) in order to materially impede an investigation into allegations of a

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corrupt, fraudulent, collusive, or coercive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing its knowledge of matters relevant to the investigation or from pursuing the investigation, or acts intended to materially impede the exercise of inspection and audit rights.

A PE will reject a proposal for award if it determines that the bidder recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in competing for the contract in question.

A PE will forward the name of a firm or individual to the Authority recommending debarment, if it at any time determines that the firm or individual has, directly or through an agent, engaged in corrupt, fraudulent, collusive, coercive, or obstructive practices in procurement proceedings.

For the purpose of this section, bidding and proposal documents and contract agreements will:

- a. Include a provision requiring bidders, suppliers, contractors and consultants to permit the officials of the PE and other concerned Government officials to inspect their accounts and records and other documents relating to the bid submission and contract performance and to have them audited by designated auditors; and
- b. Require bidders to provide an undertaking to observe, in competing for and executing a contract, laws against fraud and corruption declaring that “the bidder undertakes that in competing for and executing a contract, the bidder will strictly observe the laws against fraud and corruption in force in FGS.

Section IX. Special Conditions of Contract

The following Special Conditions of Contract (SCC) shall supplement and / or amend the General Conditions of Contract (GCC). Whenever there is a conflict, the provisions herein shall prevail over those in the GCC.

GCC 1.1(i)	The PE is: Ministry of Defense, Federal Government of Somalia
GCC 1.1 (n)	Final Destination SNA Warehouse, Mogadishu, Banadir
GCC 4.2	The version edition of Incoterms shall be Incoterms edition 2015
GCC 5.1	The language shall be: English
GCC 8.1	For <u>notices</u>, the PE's address shall be: Attention: Hassan Hussein Haji Title: Minister of Defense PE: Ministry of Defense Address: Industrial Street, Daynile District City: Mogadishu. Country: Federal Government of Somalia. For <u>notices</u>, the Supplier's address shall be: Attention: Ismail Abdulkadir Sh.Kassim Address: Makkah Shabelle Tower, Maka Al Mukarama, Mogadishu, Somalia City: Mogadishu Country: Federal Government of Somalia. Electronic mail address: info@unitedgroup.so
GCC 9.1	The governing law shall be the law of: Federal Government of Somalia

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GCC 10.2	The rules of procedure for arbitration proceedings pursuant to GCC Clause 10.2 shall be as follows: (a) <i>Contract with foreign Supplier:</i> Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. (b) <i>Contracts with Supplier national of the Federal Government of Somalia:</i> Any dispute, controversy or claim arising out of or relating to this Contract, or breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force. The number of arbitrators to the proceedings shall be three. The appointing Authority shall be the Somali Chamber of Commerce (SCCI.) The seat of arbitration shall be in the Federal Government of Somalia. The language to be used in arbitration shall be Somali. The award rendered by the arbitrator(s) shall be final and binding and shall be enforced by any Court of competent jurisdiction. The party seeking enforcement shall be entitled to an award of all costs incurred including legal fees to be paid by the party against whom enforcement is ordered.
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GCC 13	The shipping and other documents to be furnished by the Supplier to the PE shall be: • One (1) copy of the Supplier's Delivery Note to be provided with each delivery, which describes and lists the quantity of each product delivered and certifies that products delivered comply with the technical specifications; and, • One (1) copy of the Acceptance Certificate and associated Goods Inspection Report, which, once signed by the appropriate representatives of the PE, confirms the quantities of products received, inspected and accepted by the PE; The above document shall be received by the PE at the time of delivery of the Goods and if not received the Supplier will be responsible for any consequent expenses.
GCC 15.1	Total Contract Price for 12 months is : \$1,026,624.00 The unit prices charged for the Goods supplied and the related Services performed shall not be adjustable. However, the quantities required to be delivered to the Sector may vary over time, in accordance with GCC 33.1. As a result, the monthly price invoiced may change as a result of changes in quantities but not changes in unit prices.
GCC 16.1	Advance payment shall not be considered. Payment for Goods and Services supplied shall be made in USD Dollars as follows: On submission of a monthly invoice following delivery and acceptance of all goods supplied during the previous month: One hundred (100) percent of the Monthly Contract Price, as adjusted by changes in quantities actually delivered and accepted, shall be paid to the Supplier.

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	The Supplier must provide the following documents for each delivery supplied to the PE: • A copy of the delivery note signed by a SNA representative who received the goods In addition, for each delivery of non-perishable foodstuffs, the following documents must be provided: • A copy of the inspection report; and, • The acceptance letter signed by a second SNA representative, who shall be, where possible, a SNA Finance Unit representative. At the end of each month an invoice should be submitted showing the quantities of each good delivered to each location during the month and specifying the payment due. The delivery documentation described above must be attached to the invoice for each delivery that is included on the invoice. The supplier will be paid within thirty (30) days after receipt of the above documentation by the Purchaser associated with the respective deliveries by the Purchaser.
GCC 18.1	A Performance Security shall not be required
GCC 21.1	Subcontracting without the prior written authorization of the PE is not allowed
GCC 24.1	The Goods supplied under the Contract shall be fully insured against loss or damage
GCC 25.2	Additional services to be provided are: N/A
GCC 26.1	The inspections and tests shall be conducted at each delivery of non-perishable foodstuffs, These tests shall confirm the conformity of goods to the technical specifications as stated in the Bidding Documents.
GCC 26.2	The inspections and tests shall be conducted at: SNA Warehouse
GCC 27.1	The liquidated damage shall be: 1 % per week Note: The Maximum Percentage of Liquidated Damages shall be: 10 %
GCC 28.5	The period for repair or replacement shall be: within 30 days.

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GCC 33.1	In addition to those changes specified in the GCC, the PE is also entitled to increase or decrease the quantities of foodstuffs by up to 30%, upon appropriate notice.
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Section X - Contract Forms

This Section contains forms which, once completed, will form part of the Contract. The forms for Performance Security and Advance Payment Security, when required, shall only be completed by the successful Bidder after contract award.

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Notification of Award - Letter of Acceptance

[use letterhead paper of the PE]

[date]

To: *[name and address of the Supplier]*

Subject: **Notification of Award Contract No.**

This is to notify you that your Bid dated *[insert date]* for execution of the *[insert name of the contract and identification number, as given in the SCC]* for the Accepted Contract Amount of *[insert amount in numbers and words and name of currency]*, as corrected and modified in accordance with the Instructions to Bidders is hereby accepted by our Entity.

You are requested to furnish the Performance Security within 28 days in accordance with the Conditions of Contract, using for that purpose the of the Performance Security Form included in Section X, Contract Forms, of the bidding document.

Authorized Signature: _____

Name and Title of Signatory: _____

Name of Entity: _____

Attachment: Contract Agreement

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Contract Agreement

THIS AGREEMENT made

25th March, 2021

BETWEEN

- (1) **Ministry of Defense**, and having its principal place of business at Mogadishu Somalia (hereinafter called “the PE”), of the one part, and
- (2) **United Group of Company**, a corporation incorporated under the laws of Somalia and having its principal place of business at Makkah Shabelle Tower, Maka Al Mukarama, Mogadishu, Somalia (hereinafter called “the Supplier”), of the other part:

WHEREAS the PE invited Bids for certain Goods and ancillary services, viz., Supply and Delivery of Non-perishable Foodstuff (SNA)–Lot 1 (12 April) and has accepted a Bid by the Supplier for the supply of those Goods and Services for a duration of 12 (twelve) months from the date of signature of the present agreement by both parties.

The PE and the Supplier agree as follows:

1. In this Agreement words and expressions shall have the same meanings as are respectively assigned to them in the Contract documents referred to.
2. The following documents shall be deemed to form and be read and construed as part of this Agreement. This Agreement shall prevail over all other contract documents.
 - (a) the Letter of Acceptance
 - (b) the Letter of Bid
 - (c) the Addenda Nos. _____ (if any)
 - (d) Special Conditions of Contract
 - (e) General Conditions of Contract

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- (f) the Specification (including Schedule of Requirements, which is comprised of the List of Goods and Delivery Schedule; Technical Specifications; and, Inspection and Tests)
 - (g) the completed Schedules (including Price Schedules)
 - (h) Sample Forms (including the Delivery Note, Goods and Inspection Report, and Inspection Acceptance Certificate)
 - (i) any other document listed in GCC as forming part of the Contract
3. In consideration of the payments to be made by the PE to the Supplier as specified in this Agreement, the Supplier hereby covenants with the PE to provide the Goods and Services and to remedy defects therein in conformity in all respects with the provisions of the Contract.
4. The PE hereby covenants to pay the Supplier in consideration of the provision of the Goods and Services and the remedying of defects therein, the Contract Price or such other sum as may become payable under the provisions of the Contract at the times and in the manner prescribed by the Contract.

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IN WITNESS whereof the parties hereto have caused this Agreement to be executed in accordance with the laws of Somalia on the day, month and year indicated above.

For and on behalf of the PE

Hassan Hussein Haji, Minister of Defense

Signature:

Date:

Stamp:



In the presence of Major Gen. Odawaa Yusuf Rage, Chief of Defense Force

Signature:

For and on behalf of the Supplier

Ismail Abdulkadir Sh.Kassim, Managing Director

Signature:

Date:

Stamp:



In the presence of Said Mohamed Bashir, Operation Manager

Signature:

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Performance Security

(Bank Guarantee)

(Not Used)

[The bank, as requested by the successful Bidder, shall fill in this form in accordance with the instructions indicated]

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[insert name and Address of PE]*

Date: _ *[Insert date of issue]*

PERFORMANCE GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that _ *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the supply of _ *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, a performance guarantee is required.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]*

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(_____) *[insert amount in words]*, such sum being payable in the types and proportions of currencies in which the Contract Price is payable, upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating that the Applicant is in breach of its obligation(s) under the Contract, without the Beneficiary needing to prove or to show grounds for your demand or the sum specified therein.

This guarantee shall expire, no later than the Day of, 2..., and any demand for payment under it must be received by us at this office indicated above on or before that date.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

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Advance Payment Security

Demand Guarantee

(Not Used)

[Guarantor letterhead or SWIFT identifier code]

Beneficiary: *[Insert name and Address of PE]*

Date: *[Insert date of issue]*

ADVANCE PAYMENT GUARANTEE No.: *[Insert guarantee reference number]*

Guarantor: *[Insert name and address of place of issue, unless indicated in the letterhead]*

We have been informed that *[insert name of Supplier, which in the case of a joint venture shall be the name of the joint venture]* (hereinafter called "the Applicant") has entered into Contract No. *[insert reference number of the contract]* dated *[insert date]* with the Beneficiary, for the execution of *[insert name of contract and brief description of Goods and related Services]* (hereinafter called "the Contract").

Furthermore, we understand that, according to the conditions of the Contract, an advance payment in the sum *[insert amount in figures]* () *[insert amount in words]* is to be made against an advance payment guarantee.

At the request of the Applicant, we as Guarantor, hereby irrevocably undertake to pay the Beneficiary any sum or sums not exceeding in total an amount of *[insert amount in figures]* (____) *[insert amount in words]* upon receipt by us of the Beneficiary's complying demand supported by the Beneficiary's statement, whether in the demand itself or in a separate signed document accompanying or identifying the demand, stating either that the Applicant:

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- (a) has used the advance payment for purposes other than toward delivery of Goods;
or
- (b) has failed to repay the advance payment in accordance with the Contract conditions, specifying the amount which the Applicant has failed to repay.

A demand under this guarantee may be presented as from the presentation to the Guarantor of a certificate from the Beneficiary's bank stating that the advance payment referred to above has been credited to the Applicant on its account number *[insert number]* at *[insert name and address of Applicant's bank]*.

The maximum amount of this guarantee shall be progressively reduced by the amount of the advance payment repaid by the Applicant as specified in copies of interim statements or payment certificates which shall be presented to us. This guarantee shall expire, at the latest, upon our receipt of a copy of the interim payment certificate indicating that ninety (90) percent of the Accepted Contract Amount, has been certified for payment, or on the *[insert day]* day of *[insert month]*, 2 *[insert year]*, whichever is earlier. Consequently, any demand for payment under this guarantee must be received by us at this office on or before that date.

[signature(s)]

Note: All italicized text (including footnotes) is for use in preparing this form and shall be deleted from the final product.

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Sample Forms

Delivery/Receipt Note

Order Date	Filing Ref. No. #	Delivery Date
------------	-------------------	---------------

Delivered to Address

Name of Procuring Entity: Ministry of Defense
Address:
Address 2: Federal Republic of Somalia
Phone: N/A

Invoice Name and Address

Name Vendor:
Address:
Address 2:
Tel:

[illegible]

Signature of Representative of User Department and Date

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Acceptance Certificate

Contract: *[insert: name of Contract]*

To: *[insert: name and address of Supplier]*

Date of Delivery:

Delivery Site:

Dear Sir or Madam:

Pursuant to GCC Clause 26 (Inspections and test) of the Contract entered into between yourselves and the **PE** dated *[insert: date of Contract]*, relating to the **supply and delivery of non-perishable food stuff (SNA)**, we hereby notify you that we have accepted the goods delivered to the Site mentioned above on the date mentioned above. Where required, these goods have successfully completed the inspection tests specified in the Contract. In accordance with the terms of the Contract, the PE hereby gives its approval for payment of the goods delivered on the date mentioned above. This letter shall not relieve you of your remaining performance obligations under the Contract.

For and on behalf of the PE

Signed:

Date:

in the capacity of: **[Insert name and title]**

Attachment: Goods Inspection Report, where required by SCC 26.

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GOODS INSPECTION REPORT

(to be attached to the Inspection Acceptance Certificate)

Supplier Name :

Supplier Address:

Contract Name :

Date of Delivery :

Place of Delivery:

No	Description	Test Results Comments	Status	
			Accepted	Rejected
Etc....				

Description item of Total Quantity Received	Total Acceptable Quantity	Total Rejected Quantity	Total Returned Quantity	Total Amount Paid
Etc...				

Date and Signature of Second SNA Representative (Finance Unit Representative where possible)

Name

Title

Date and Signature of SNA Representative:

Name

Title

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Annex 1: Bid Price Schedule

Price Schedule: Non-perishable foodstuff – Lot 1 (12 April) (to be filled out by suppliers)

Date: 25/1/2021								
Alternative No: __/N/A __. RFB No: FGS/MO/FCB/2021								
Line Item	Description of the items	Quantities	Physical Unit	Delivery Destination	Supplier to Include	Supplier to include	Supply to confirm if product offered fully compliant with technical specifications	Supplier Confirm D
N°	(see detailed description in technical specifications)	Required Monthly			Unit Price (USD) (In figures/letters)	Total Price DDP per item (In figures/letters)	(Yes or no)	Site
1	Sugar	212	50 Kgs		29	6,148.00	Yes	
2	Rice (Hamza)	264	50 Kgs		40	10,560.00	Yes	
3	Wheat flour	264	50 Kgs		32	8,448.00	Yes	
4	Pasta (Arbel)	3,296	10 Kgs	1. Sector 12 April - Banadir	7.5	24,720.00	Yes	1. Sector 12 April - Banadir
5	Wheat	264	50 Kgs		29	7,656.00	Yes	
6	Cooking oil (Cadey)	530	20 litres		34	18,020.00	Yes	
7	Dates	500	8 Kgs		20	10,000.00	Yes	
TOTAL MONTHLY PRICE: NON-PERISHABLE FOODSTUFFS								USD 85,



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Price Schedule: Total Bid Price (to be filled out by suppliers)

TOTAL MONTHLY PRICE: NON-PERISHABLE FOODSTUFFS - Insert price from above	USD 85,552
TOTAL CONTRACT PRICE: - Multiply the Monthly contract price by the number of months (12) of the contract;	USD 1,026,624

Name of Bidder: *United Group of Companies*

Signature of Bidder:

Date: *25th January, 2021*



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