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## **1. GENERAL AND CONTRACTUAL CONDITIONS**

The general terms and conditions of the contractual agreement ("the Contract") between WHO and the selected bidder ("the Contractor") will include provisions as set forth in this section, and will cover the following issues:

- responsibilities, indemnities and liabilities of the Contractor(s) and WHO;
- conditions concerning the termination of the contract(s);
- clear deliverables and acceptance procedures;
- payment terms tied to the satisfactory completion of the work;
- training and post implementation support;
- allowance for changes;
- warranties and representations;
- notices.

Services under this Contract will be supplied on a fixed-price basis in US Dollars.

### **1.1 Responsibility**

The Contractor will be responsible to ensure that the services rendered under the Contract are in accordance with the specifications and within the time prescribed.

### **1.2 Source of Instructions**

The Contractor shall neither seek nor accept instructions from any authority external to WHO in connection with the performance of its services under this Contract. The Contractor shall refrain from any action which may adversely affect WHO and shall fulfil its commitments with the fullest regard to the interests of WHO.

### **1.3 Warranties**

The Contractor will warrant and represent to WHO as follows:

- 1) The deliverables shall meet the specifications and shall function in a manner which is fully adequate to meet its intended purpose. The Contractor furthermore warrants that the deliverables shall be error-free, in that the Contractor shall correct any errors in the deliverables, free of charge, within fifteen days after their notification to the Contractor, during a period of at least six months after completion of the work. It is agreed, however, that errors and other defects, which have been caused by modifications to the deliverables made by WHO without agreement of the Contractor are not covered by this paragraph.
- 2) The deliverables shall, to the extent it is not original, only be derived from, or incorporate, material over which the Contractor has the full legal right and authority to use it for the proper implementation of this Contract. The Contractor shall obtain all the necessary licenses for all non-original material incorporated in the deliverables including, but not limited to, licenses for WHO to use any underlying software, application, and operating deliverables included in the deliverables or on which it is based, so as to permit WHO to fully exercise its rights in the deliverables and the software without any obligation on WHO's part to make any additional payments whatsoever to any party.
- 3) The deliverables shall not violate any copyright, patent right, or other proprietary right of any third party and be delivered to WHO free and clear of any and all liens, claims, charges, security interest and any other encumbrances of any nature whatsoever.
- 4) The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on the copyright of any document or other material (whether machine readable or not) to which the Contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract.

- 5) Except as otherwise explicitly provided in this Contract, the Contractor shall at all times provide all the necessary on-site and off-site resources to meet its obligations hereunder. The Contractor shall only use highly qualified staff, acceptable to WHO, to perform its obligations hereunder.
- 6) The Contractor shall take full and sole responsibility for the payment of all wages, benefits and monies due to all persons and entities used by it in connection with the implementation and execution of the Contract, including, but not limited to, the Contractor's employees, permitted subcontractors and suppliers.

## **1.4 Legal Status**

The Contractor shall be considered as having the legal status of an independent contractor and as such there will be no employer/employee relationship between WHO on the one side and the Contractor or any person used by the Contractor on the other side.

Thus the Contractor shall be solely responsible for the manner in which the work is carried out. WHO shall not be responsible for any loss, accident, damage or injury, including, but not limited to, damage to test equipment, spare parts and other property, suffered by the Contractor or persons or entities claiming under the Contractor, arising during or as a result of the implementation or execution of the Contract, including travel, whether sustained on WHO premises or not.

The Contractor shall obtain adequate insurance to cover such loss, accident, injury and damages, before commencing work on the Contract. The Contractor shall be solely responsible in this regard and shall handle any claims for such loss, accident, damage or injury.

Nothing in or relating to the agreement with the Contractor shall be deemed a waiver of any of the privileges and immunities of WHO in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 or otherwise under any national or international law, convention or agreement.

## **1.5 Relation Between the Parties**

The Contract does not constitute a partnership between the Parties or to constitute either Party as the agent of the other.

## **1.6 Waiver of Breach**

The waiver by an act, omission or knowledge of either Party, its agents or its employees of any provision or breach of the contract shall not prevent subsequent enforcement of such provision or excuse further breaches.

## **1.7 Liability**

The Contractor hereby indemnifies and holds WHO harmless from and against the full amount of any and all claims and liabilities, including legal fees and costs, which are or may be made, filed or assessed against WHO at any time and based on, or arising out of, breach by the Contractor of any of its representations or warranties under the Contract, regardless of whether such representations and warranties are explicitly incorporated here in or are referred to in any attached Appendices.

## **1.8 Assignment**

The Contractor shall not assign, transfer, pledge or make other disposition of this Contract or any part thereof, or any of the Contractor's rights, claims or obligations under this Contract except with the prior written consent of WHO.

## **1.9 Officials not to Benefit**

The Contractor warrants that no official of WHO has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that

breach of this provision is a breach of an essential term of this Contract. The Contractor also warrants that it is not and will not be involved in, or associated with, any entity involved in terrorism.

### **1.10 Indemnification**

The Contractor shall indemnify, hold and save harmless, and defend, at its own expense, WHO, its officials, agents, servants and employees from and against all suits, claims, demands, and liability of any nature or kind, including their costs and expenses, arising out of acts or omissions of the Contractor, or the Contractor's employees, officers, agents or sub-contractors, in the performance of this Contract. This provision shall extend, *inter alia*, to claims and liability in the nature of workmen's compensation, products liability and liability arising out of the use of patented inventions or devices, copyrighted material or other intellectual property by the Contractor, its employees, officers, agents, servants or sub-contractors. (These obligations shall not lapse upon termination of the contract)

### **1.11 Contractor's Responsibility for Employees**

The Contractor shall be responsible for the professional and technical competence of its employees and will select, for work under this Contract, reliable individuals who will perform effectively in the implementation of this Contract, respect the local customs, and conform to a high standard of moral and ethical conduct.

### **1.12 Subcontracting**

Any intention to subcontract aspects of this contract must be specified in detail in the tender submitted. Information concerning the subcontractor, including the qualifications of the staff proposed for use must be covered with same thoroughness as the prime contractor. No subcontracting will be permitted under this Contract unless it is proposed in the initial submission or formally agreed to by WHO at a later time. In any event, the total responsibility for the Contract rests with the prime contractor.

### **1.13 Language**

The internal communications of the work performed for this project, management and contractual communications for this project will be executed in English.

### **1.14 Confidentiality**

- 1) Except as explicitly provided in the Contract, the Contractor shall keep confidential all information which comes to its knowledge during, or as a result of, the implementation and execution of the Contract. Accordingly, the Contractor shall not use or disclose such information for any purpose other than the performance of its obligations under the Contract. The Contractor shall ensure that each of its employees and/or other persons and entities having access to such information shall be made aware of, and be bound by, the obligations of the Contractor under this paragraph. However, there shall be no obligation of confidentiality or restriction on use, where: (i) the information is publicly available, or becomes publicly available, otherwise than by any action or omission of the Contractor, or (ii) the information was already known to the Contractor (as evidenced by its written records) prior to becoming known to the Contractor in the implementation and execution of this Contract; or (iii) the information was received by the Contractor from a third party not in breach of an obligation of confidentiality.
- 2) The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on copyright of any document (whether machine-readable or not) to which the Contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract. (These obligations shall not lapse upon termination of the contract)

### **1.15 Confidential Nature of Documents and Information**

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of WHO,

shall be treated as confidential and shall be delivered only to WHO authorized officials prior to completion of work under this Contract.

The Contractor may not communicate at any time to any other person, Government or authority external to WHO, any information known to it by reason of its association with WHO which has not been made public except with the authorization of WHO; nor shall the Contractor at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

### 1.16 Title Rights

- 1) This is a work made for hire. WHO shall be the owner of all intellectual property rights, including but not limited to patents, copyrights and trademarks, with regard to all deliverables and other material which bears a direct relation to, or is made in consequence of, the services provided to the Organization by the Contractor.
- 2) WHO reserves the right to revise the work, to use the work in a different way from that originally envisaged or to not use the work at all.
- 3) At WHO's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist WHO in securing such proprietary rights and transferring them to WHO in compliance with the requirements of applicable law.

### 1.17 Cancellation

WHO shall have the right to cancel the Contract (in addition to other rights, such as the right to claim damages):

- 1) At will with the provision of thirty (30) days prior notice in writing;
- 2) In the event the Contractor fails to begin work on the date agreed, or to implement the work in accordance with the terms of the Contract; or
- 3) In the event the progress of work is such that it becomes obvious that the obligations undertaken by the Contractor and, in particular, the time of fulfilment, will not be respected.
- 4) In addition, WHO shall be entitled to terminate the Contract (or part thereof), in writing, with immediate effect (in addition to other rights, such as the right to claim damages), if, other than as provided in the paragraph above, the Contractor is:
  - a. In breach of any of his material obligations under the Contract and fails to correct such breach within a period of thirty (30) days after having received a written notification to that effect from WHO; or
  - b. Adjudicated bankrupt or formally seeks relief of his financial obligations.

### 1.18 Force Majeure

No party to the Contract shall be responsible for a delay caused by force majeure, that is, a delay caused by strike, lock-out, foreign or civil war, or any other event outside his control, it being agreed, however, that WHO shall be entitled to terminate the Contract (or any part of the Contract) forthwith if the implementation of the work is delayed or prevented by any such reason for an aggregate of thirty (30) days. Such termination shall be subject to payment of an equitable part of the Contract sum and/or other reasonable charges. In the event of such termination, the Contractor shall, in accordance with the ownership rights referred to in section 1.16 *Title rights*, deliver to WHO all work products and other materials so far produced.

- a) Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.
- b) In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to WHO, of such occurrence or change if the Contractor is thereby rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify WHO of any other changes in conditions or the occurrence of any event which

interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, WHO shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

- c) If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, WHO shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in section *1.17 Cancellation*, except that the period of notice shall be seven (7) days instead of thirty (30) days.

### **1.19 Use of WHO name and emblem**

Without WHO's prior written approval, the Contractor shall not, in any statement of an advertising or promotional nature, refer to the Contract or his relationship with WHO. In no case shall the Contractor use the name or the emblem of the World Health Organization, or any abbreviation thereof, in relation to its business or otherwise.

### **1.20 Successors and Assignees**

The Contract shall be binding upon the successors and assignees of the Contractor and the Contract shall be deemed to include the Contractor's successors and assignees, provided, however, that nothing in the Contract shall permit any assignment without the prior and written approval of WHO.

### **1.21 Payment**

Payment will be made against presentation of an invoice for each deliverable and subject to WHO's acceptance of each deliverable. Any payments by WHO to the Contractor shall reflect any tax exemptions to which WHO is entitled by reason of the immunity it enjoys. WHO is exempt from all direct taxes, customs duties and the like and the Contractor shall consult with WHO so as to avoid the imposition of such charges. As regards duties and other indirect taxes, the Contractor shall list such charges on invoices as a separate item and, to the extent required, cooperate with WHO to enable reimbursement thereof.

### **1.22 Insurance and Liabilities to Third Parties**

The Contractor shall provide and thereafter maintain insurance against all risks in respect of its property and any equipment used for the execution of this Contract.

The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance, or its equivalent, with respect to its employees to cover claims for personal injury or death in connection with this Contract.

The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third party claims for death or bodily injury, or loss of or damage to property, arising from or in connection with the provision of services under this Contract or the operation of any vehicles, boats, airplanes or other equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors performing work or services in connection with this Contract. Except for the workmen's compensation insurance, the insurance policies under this Article shall:

- a) Name WHO as additional insured;
- b) Include a waiver of subrogation of the Contractor's rights to the insurance carrier against WHO;
- c) Provide that WHO shall receive thirty (30) days written notice from the insurers prior to any cancellation or change of coverage.

The Contractor shall, upon request, provide WHO with satisfactory evidence of the insurance required under this Article.

### **1.23 Settlement of Disputes**

Any dispute relating to the interpretation or application of the contract shall, unless amicably resolved, be subject to conciliation. In the event of failure of the latter, the dispute shall be settled by arbitration. The arbitration shall be conducted in accordance with the modalities to be agreed upon by the parties or, in the absence of agreement, with the rules of arbitration of the International Chamber of Commerce. The parties shall accept the arbitral award as final.

### **1.24 Observance of the Law**

The Contractor shall comply with all laws, ordinances, rules, and regulations bearing upon the performance of its obligations under the terms of this Contract.

### **1.25 Authority to Modify**

No modification or change in this Contract, no waiver of any of its provisions or any additional contractual relationship of any kind with the Contractor shall be valid and enforceable against WHO unless provided by an amendment to this Contract signed by the authorized official of WHO.

### **1.26 Privileges and Immunities**

Nothing in or relating to this Contract shall be deemed a waiver of any of the privileges and immunities of WHO in conformity with the Convention on the Privileges and Immunities of the Specialized Agencies approved by the General Assembly of the United Nations on November 21, 1947 or otherwise under any national or international law, convention or agreement.

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## **2. PERSONNEL**

### **2.1 Account Manager**

Each party shall appoint a qualified Account manager who shall serve as such party's primary liaison throughout the course of the provisioning the solution.

The Account Manager shall meet as needed in order to review the status of the solution and provide WHO with reports. Such reports shall be used to provide the Contractor's billing information to WHO and shall cover SLA status, problems, meetings, progress and status against the provisioning of the solution..

### **2.2 Ethical Behaviour**

WHO, the Contractor and each of the Contractor's subcontractors and their employees and agents shall adhere to the highest ethical standards in the performance of this Agreement.

### **2.3 Engagement of Third Parties and use of In-house Resources**

The Contractor acknowledges that WHO may elect to engage Third Parties to participate in or oversee certain aspects of the solution and that WHO may elect to use its in-house resources for the performance of certain aspects of the solution. The Contractor shall at all times cooperate with and ensure that the Contractor and each of its subcontractors and their employees and agents cooperate, in good faith, with such Third Parties and with any WHO in-house resources.