

# IMA WORLD HEALTH TERMS AND CONDITIONS

## 1. CONFIDENTIALITY

Contractor acknowledges that any information obtained in performing this Contract regarding IMA WORLD HEALTH's operations, products, services, policies, systems, programs, procedures, employees, strategies, research, budgets, proposals, finances, plans, donor or business relationships, or any other aspect of its business that is not generally known to the public, is confidential and proprietary. During and after the Term, Contractor will hold such information confidential and will not:

(i) use such information for any purpose other than performance of this Contract; or (ii) disclose such information, directly or indirectly, to anyone outside IMA WORLD HEALTH, without in each instance the prior written consent of IMA WORLD HEALTH.

## 2. COMMUNICATIONS

IMA will be responsible for all communications with the Donor on issues related to the Project. The Contractor will not communicate directly with the Donor concerning the Project and will always channel communications regarding the Project through IMA.

## 3. TERMINATION

This Contract may be terminated by either Party at any time prior to or at the scheduled expiration date with or without cause by issuance of a thirty (30) days written notice. In the event of such termination, IMA World Health will pay the Contractor for the actual amount of services rendered up to the point of termination.

Termination for Default. IMA World Health may terminate the Agreement at any time, or from time to time, in whole or in part, by written notice effective on the later of the date of the notice or the effective date specified in the notice, if any one or more of the following should occur:

(I) Contractor becomes insolvent or makes a general assignment for the benefit of creditors;

(II) A petition under any bankruptcy act or similar statute is filed by or against Contractor;

(III) Contractor fails to make all products available within the time provided in quotations received in response to the Request for Quotations.

(IV) Contractor fails to perform an obligation under any provision of this Contract, or so fails to make progress as to substantially endanger performance of this Contract in accordance with this terms, provided that, Contractor fails to remedy any such condition within twenty (30) days from the receipt of a written notice from IMA World Health concerning the existence of the failure; or

(V) Contractor's financial condition becomes such as to endanger completion of performance (subject to the same provision as Contract paragraph (IV) above).

B. Termination for Convenience. IMA World Health shall have the unilateral right, at any time and from time to time, to terminate for convenience (regardless of whether the Contractor is in breach of any obligation under this Contract), effective on the later of the date of the notice or the effective date stated in the notice, all or any portion of the Contract, by the issuance of written notice to the Contractor. Upon receipt of the notice, Contractor shall immediately discontinue performance and shall comply with IMA World Health's instructions concerning completed and partially completed deliveries.

Termination for convenience shall not affect IMA World Health's obligations with respect to items delivered prior to such termination. For any products already manufactured and not delivered, both contractor and IMA World Health shall equally share any associated manufacturing costs where applicable.

#### **4. PROHIBITION ON ADVERTISING**

The Contractor shall not advertise or otherwise make public that it is furnishing services to IMA WORLD HEALTH without specific permission of IMA WORLD HEALTH in each instance.

#### **5. INTELLECTUAL PROPERTY**

Contractor warrants that the use or supply by IMA World Health of the goods sold under this Contract does not infringe any patent, design, trade-name or trade-mark. In addition, the Contractor shall, pursuant to this warranty, indemnify, defend and hold IMA World Health harmless from any actions or claims brought against IMA World Health pertaining to the alleged infringement of a patent, design, trade-name or trade-mark arising in connection with the goods sold under this Contract.

## **6. INDEMNIFICATION**

Each Party shall indemnify, defend and hold harmless the other Party and any affiliated and controlling entities of such Party, and the directors, employees, officers, agents, sub-Contractors, licensors and suppliers from and against all third party liabilities, claims, suites, demands, actions, fines, damages, losses, costs and expenses (including reasonable attorney's fees) ("Claims") for injury to or death of any person or damage to or loss of improvements to real property or tangible personal property to the extent caused by or resulting from such Party's negligent acts or omissions or willful misconduct, except to the extent caused by the Indemnitee.

## **7. FORCE MAJEURE**

A. If the Contractor fails to perform any of its obligations under this Contract due to a force majeure event, the Contractor shall, to such extent, not be liable to the IMA WORLD HEALTH for any excess costs directly arising from such failure to perform, and the availability for sampling schedule shall be deemed extended by the duration of that event, provided that the Contractor notifies the IMA WORLD HEALTH in writing, within ten (10) days after the beginning of the force majeure event, of the failure(s) and the cause(s) thereof. The term "force majeure event" is defined as a cause, not in existence on the Effective Date of the Contract that is beyond the control and without the fault or negligence of the Contractor, of a type whose occurrence was not reasonably foreseeable at the time the Contract was executed. Examples of force majeure events include, without limitation, the sovereign acts of governments, fires, floods, epidemics, revolutions, quarantine restrictions, freight embargoes, or prolonged unusually severe weather conditions. A delay by an approved assignee or sub-Contractor shall not constitute a force majeure event, unless the cause of the delay, if it had occurred directly to the Contractor, would have qualified as such an event.

B. Notwithstanding the occurrence of a force majeure event, the Contractor, unless otherwise directed by the IMA WORLD HEALTH in writing, shall continue to perform its obligations under this Contract to the maximum extent practicable. In addition, the Contractor shall seek, at no additional cost, all reasonable alternative means of performance not precluded by the force majeure event.

C. The occurrence or continuation of a force majeure event shall not, by itself, entitle the Contractor to any increase in the prices stated in this Contract.

## **8. PROHIBITION OF TERRORISM ACTIVITIES**

- a) As a acceptance of this Contract, the Contractor hereby certifies that it has not provided and will not provide material support or resources to any individual or entity that it knows, or has reason to know, is an individual or entity that advocates, plans, sponsors, engages in, or has engaged in terrorist activity,

including but not limited to the individuals and entities listed in the Annex to Executive Order 13224 and other such individuals and entities that may be later designated by the United States under any of the following authorities: § 219 of the Immigration and Nationality Act, as amended (8 U.S.C. § 1189), the International Emergency Economic Powers Act (50 U.S.C. § 1701 et seq.), the National Emergencies Act (50 U.S.C. § 1601 et seq.), or § 212(a)(3)(B) of the Immigration and Nationality Act, as amended by the USA Patriot Act of 2001, Pub. L. 107- 56 (October 26, 2001) (8 U.S.C. §1182). The Contractor further certifies that it will not provide material support or resources to any individual or entity that it knows, or has reason to know, is acting as an agent for any individual or entity that advocates, plans, sponsors, engages in, or has engaged in, terrorist activity, or that has been so designated, or will immediately cease such support if an entity is so designated after the date of the referenced Contract.

- b) For purposes of this certification, "material support and resources" includes currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.
- c) For purposes of this certification, "engage in terrorist activity" shall have the same meaning as in section 212(a)(3)(B)(iv) of the Immigration and Nationality Act, as amended (8 U.S.C. § 1182(a)(3)(B)(iv)). For purposes of this certification, "entity" means a partnership, association, corporation, or other organization, group, or subgroup.
- d) This certification is an express term and condition of the Contract and any violation of it shall be grounds for unilateral termination of the Contract by IMA WORLD HEALTH prior to the end of its term.

## **9. GOVERNING LAW**

- a) The governing language of the Contract shall be English, and all notices and other communications relating or pursuant to the provisions of the Contract (including, without limitation, those in connection with issues, settlement of disputes) shall be in English.
- b) The Contract, its formation, and the facts and circumstances surrounding its making and performance, shall be interpreted in accordance with the following, listed in order of precedence: (1) the express terms and conditions of the Contract, and (2) the laws in effect in **Washington DC**.

## **10. SETTLEMENT OF DISPUTES**

- a) **Amicable Settlement: Issues**

The Parties shall exert their best efforts, in good faith, to consult together to resolve all issues that may arise in connection with this Contract, its formation, or the surrounding facts and circumstances, in an equitable and mutually satisfactory manner. An issue that cannot be resolved in this way shall be treated as a disagreement under Article b) below (“Disagreement”).

**b) Arbitration: Disagreements and Disputes**

- i. In the event of a Disagreement arising under or relating to this Contract, its formation, or the surrounding facts and circumstances, either Party (the “Initiating Party”) may submit to the other Party (the “Receiving Party”) a written statement, specifically designated as a Notice of Disagreement, briefly describing the nature of the problem, the position of the Initiating Party regarding the problem, a narrative of the material facts and arguments in favor of the Initiating Party’s position, and a statement of the actions or other relief requested.
- ii. Within thirty (30) days after receipt of a Notice of Disagreement, the Receiving Party shall issue a written decision (“Decision”), designated as such, with supporting findings and reasons, and promptly communicate the same to the Initiating Party.
- iii. Within ninety (30) days after the issuance of a Decision, either Party may deem the disagreement to be a dispute (“Dispute”) and refer it to arbitration. All Disputes arising under or relating to this Contract, its formation, or the surrounding facts and circumstances, -- regardless of their legal nature, category, or amount -- shall be finally settled under the international arbitration rules of the American Arbitration Association (“AAA”), as then in effect, by one or more arbitrators appointed in accordance with the said rules and the provisions of this Article.
- iv. In any AAA arbitration, the Parties agree as follows: (1) each Party shall bear its own costs, and the AAA’s costs and fees shall be assessed as the arbitrator deems appropriate; (2) the place of arbitration shall be Washington DC., or any other location on which the Parties may subsequently agree; (3) the language of all proceedings, communications, and the award, shall be English; (4) the Parties shall mutually agree on a single arbitrator (failing which, either Party may request the AAA to make a designation); (5) unless otherwise agreed in writing by the Parties, the arbitrator shall decide the case solely upon submission of written documentation and statements, examining such materials and resolving the matter by issuance of a written decision which may include a monetary award (but not a penalty, however described), as appropriate.

- v. The procedures of this Article shall be the sole and exclusive method for resolution of all Disagreements and Disputes in connection with this Contract, its formation, and the facts and circumstances surrounding its making and performance. Parties specifically represent and warrant that an arbitration award issued pursuant to this Article will be enforceable under laws of Contractor's country. Any such award shall be final and binding on the Parties. Judgment may be entered upon the award in a court of competent jurisdiction, or application may be made to such court for a judicial acceptance of the award and an order for enforcement.
- vi. Notwithstanding the existence of a Disagreements or Dispute under this Sub Article, or of an issue pursuant to Sub Article 9.a) and b), the Parties shall, unless otherwise mutually agreed in writing by the Parties, continue to perform their obligations under the Contract.
- vii. If a judicial proceeding is brought (1) to resolve a Dispute subject to arbitration hereunder, or (2) to challenge the validity of an award rendered hereunder, each defendant in that proceeding, if it prevails, shall receive its costs, fees and reasonable attorneys' fees, including costs and fees on appeal. If a Party fails to comply with an award rendered hereunder, and the other Party is forced to seek enforcement of the award in court, each plaintiff in that proceeding, if it prevails, will be entitled to receive its costs, fees and reasonable attorneys' fees, including costs and fees on appeal.
- viii. The arbitral tribunal shall have no authority to award punitive damages.

## **11. ASSIGNMENT AND INSOLVENCY**

- a) The Contractor shall not, except after obtaining the written consent of IMA WORLD HEALTH, assign, transfer, pledge or make other disposition of this Contract, or any part thereof, or any of the Contractor's rights or obligations under this Contract.
- b) Should the Contractor become insolvent or should control of the Contractor change by virtue of insolvency, IMA WORLD HEALTH may, without prejudice to any other rights or remedies, immediately terminate this Contract by giving the Contractor written notice of termination.

## **12. CHANGES & AMENDMENTS**

Changes in the terms, conditions, or specifications stated in this Contract may be made only by Contract between the parties. Neither party may assign its rights or responsibilities under this Contract without the prior written consent of the other party.

### **13. RIGHTS OF IMA WORLD HEALTH**

In case of failure by the Contractor to fulfill its obligations under the terms and conditions of this Contract or to make delivery of all or part of the goods/supplies by the agreed delivery date or dates, IMA WORLD HEALTH may, after giving the Contractor reasonable notice to perform and without prejudice to any other rights or remedies, exercise one or more of the following rights:

- a. Procure all or part of the services from other sources, in which event IMA WORLD HEALTH may hold the Contractor responsible for any excess cost occasioned thereby.
- b. Cancel this Contract without any liability for termination charges or any other liability of any kind to IMA WORLD HEALTH.

### **14. RELATIONSHIP**

It is understood and agreed that the Contractor is furnishing the goods and/or services under this Contract as an independent entity, and nothing contained in this Contract will create any association, partnership, joint venture, employer-employee or agent-principle relationship. The relationship established by this Contract shall be solely between IMA and the Contractor; with the Contractor retaining full and complete liability for the actions or inactions of any subcontractors or agents.

### **15. INSURANCE**

In addition to any other insurance coverage required by Law, the Contractor shall, at all times during the period of performance of this Contract, carry and maintain adequate insurance to cover any and all claims, losses or damages arising from activities conducted for the purposes of this Contract.

### **16. INSEPTION & ACCEPTANCE**

The Contractor shall only tender for acceptance those items that conform to the requirements of this Contract. Acceptance of goods/deliverables is understood to take place either upon signature of a goods received note by an authorized individual, or upon written email confirmation sent by an authorized individual. IMA reserves the right to inspect or test any supplies or services that have been tendered for acceptance. IMA may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in Contract price. If repair/replacement or reperformance will not correct the defects or is not possible, IMA may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies

or services.

## **17. TRAFFICKING IN PERSONS/PROHIBITED LABOR**

IMA has a zero tolerance policy regarding all forms of trafficking in persons, including but not limited to: Forced labor, sex trafficking, bonded labor, debt bondage among migrant laborers, involuntary domestic servitude, forced or indentured child labor, and child soldiers. Contractor and employees, lower-tier contractors and/or consultants of the Contractor shall not engage in any form of trafficking in persons during the period of performance of this Contract. Additional information can be obtained from IMA Contracting Officer.

The Contractor shall not use the labor of any person undergoing a sentence of imprisonment imposed in any court of the United States or its outlying territories in performance of this Contract nor shall the Contractor knowingly furnish to IMA any products mined, produced, or manufactured by such labor. Should any products provided be found to have been provided in violation of this clause the Contractor shall immediately refund any amounts paid by IMA for said Products.

## **18. CODE OF CONDUCT FOR THE PROTECTION OF BENEFICIARIES OF ASSISTANCE FROM SEXUAL EXPLOITATION AND ABUSE IN HUMANITARIAN RELIEF OPERATIONS**

As a condition of this Contract, the Contractor agrees to adhere to a code of conduct for the protection of beneficiaries of assistance from sexual exploitation and abuse in humanitarian relief operations conducted hereunder consistent with the six core principles listed below set forth by the UN Interagency Standing Committee on Protection from Sexual Exploitation and Abuse in Humanitarian Crises:

- (a) Sexual exploitation and abuse by humanitarian workers constitute acts of gross misconduct and are therefore grounds for termination of employment.
- (b) Sexual activity with children (persons under the age of 18) is prohibited regardless of the age of majority or age of consent locally. Mistaken belief in the age of a child is not a defense.
- (c) Exchange of money, employment, goods or services for sex, including sexual favors or other forms of humiliating, degrading or exploitative behavior is prohibited. This includes exchange of assistance that is due to beneficiaries.
- (d) Sexual relationships between humanitarian workers and beneficiaries are strongly discouraged since they are based on inherently unequal power dynamics. Such relationships undermine the credibility and integrity of humanitarian aid work.

- (e) Where a humanitarian worker develops concerns or suspicions regarding sexual abuse or exploitation by a fellow worker, whether in the same humanitarian aid agency or not, he or she must report such concerns via established agency reporting mechanisms.
- (f) Humanitarian workers are obliged to create and maintain an environment that prevents sexual exploitation and abuse and promotes the implementation of their code of conduct. Managers at all levels have particular responsibilities to support and develop systems that maintain this environment.

## **19. ANTI-BRIBERY/KICKBACK/LOBBYING CERTIFICATION**

By signing this Contract, the Contractor hereby certifies that the Contractor or any agents thereof:

- a) have not and will not pay, offer to pay, or authorize the payment directly or indirectly of any monies or things of value to any government official or employee, or to any political party or candidate for political office for the purpose of influencing any act or decision of such official or of the Government.
- b) are not and will not become an official or employee of the Government during the term of this Contract.
- c) have not and will not solicit or attempt to solicit any additional personal compensation, credit, gift, gratuity, or thing of value directly or indirectly, from any IMA employee in order to obtain or retain business or direct business to any person.
- d) have not and will not include, directly or indirectly, the amount of any bribes or kickbacks in the price of this Contract and will notify IMA immediately if any IMA staff member requests any form of gift, commission, or personal discount.

In no event shall IMA be obligated under this Contract to take any action or omit to take any action which IMA believes in good faith would cause it to be in violation of any laws, including without limitation the U.S. Foreign Corrupt Practices Act.

## **20. OTHER COMPLIANCE**

The Contractor shall comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this Contract. Including, but not limited to:

- i Equal Opportunity,

- ii Affirmative Action for Workers with Disabilities,
- iii The Prohibition of Segregated Facilities,
- iv Service Contract Act of 1965
- v All applicable local labor laws
- vi The anti-boycott laws administered by the U.S. Commerce and Treasury Departments
- vii Any proclamation, Executive order, or statute administered by OFAC, and OFAC's implementing regulations at 31 CFR chapter V
- viii International Traffic in Arms Regulations, 22 C.F.R. Parts 120 *et seq.*; the Export Administration Regulations, 15 C.F.R. Parts 730 *et seq.*; and the Foreign Asset Control Regulations, 31 C.F.R. Chapter V
- ix All applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*).
- x The Cargo Preference Act of 1954 (46 U.S.C. App. 1241(b))
- xi 49 U.S.C. 40118, the "Fly America Act"

Contractor shall be held responsible for ensuring that all subcontractor and/or agents performing work under this Contract comply with all applicable Federal, State, and local laws, executive orders, rules and regulations applicable to its performance under this Contract.

- xii. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148).
- xiii. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
  - i. Work Hours and Safety Standards Act (40 U.S.C. 3701-3708)
  - ii. Work Hours and Safety Standards Act (40 U.S.C. 3701-3708).

## **21. TAXES**

As a registered non-profit corporation IMA is exempt from Sales and Value Added Taxes. The Contractor shall exclude any such taxes from the Contract price.

## 22. BANKRUPTCY

In the event the Contractor enters into proceedings relating to bankruptcy, whether voluntary or involuntary, the Contractor agrees to furnish written notification of the bankruptcy to IMA immediately upon the initiation of any proceedings relating to that bankruptcy. This notification shall include the date on which the bankruptcy petition was filed, the identity of the court in which the bankruptcy petition was filed, and a listing of all Purchase Order(s) against which final payment has not been made. This obligation remains in effect until final payment under this Contract.

## 23. DELAYS

Products are to be used for time sensitive projects in the destination country. The Contractor must notify IMA World Health of any delays in production and/or transportation arrangements as soon as such delays are known.

Contractor shall provide biweekly production status report for all items. Once products are shipped, a separate shipment report must be provided as shipments are dispatched. Report must contain at minimum

- Purchase Order numbers
- Commercial invoice numbers
- Purchase Order costs
- Quantities
- Freight costs
- BOL/AWB/Container numbers

## 24. LIQUIDATED DAMAGES

Time is of the essence in performing this Contract. Failure by the Contractor to deliver the full quantity and quality required by the Contract on time will negatively impact the critical health-related overseas development program.

Accordingly, both Parties agree that, except with respect to periods in which force majeure legitimately applies, IMA World Health may assess liquidated damages in the event that the Contractor fails to ship and deliver in compliance with quoted delivery times. The term “force majeure” is defined as a cause, not in existence on the Effective Date of this Contract that is beyond the control and without the fault or negligence of the Contractor or its sub-contractor, Contractor or agents, of a type whose occurrence was not reasonably foreseeable at the time the Contract was executed.

The amount of liquidated damages for each order will be **(2.5)** percent of the total value of the affected shipment per month not to exceed a total of ten **(10)** percent of the applicable Contract Price. Liquidated damages may be deducted by IMA World Health from any payments or other amounts (whether or not relating to the Contract) due to the Contractor whenever feasible. To the extent that deduction is not feasible, Contractor

agrees to refund the amount determined in accordance with this Article promptly upon demand.

## **25. MONITORING & SITE INSPECTION**

IMA reserves the right to inspect the services provided by the Contractor at any time and at any location it deems necessary to ensure full compliance with the terms and conditions of this Contract. The Contractor shall provide full and open access to all its facilities, vehicles, records/audit records and personnel involved in or related to the services to be provided under this Contract.

## **26. TITLE & RISK OF LOSS**

Title and Risk of loss or damage to the Product(s) provided under this Contract shall remain with the Contractor until IMA or its designee, consignee, or agent receives delivery of and accepts the Product(s) at the destination specified in the Contract. Title and Risk of loss or damage shall pass to IMA only upon IMA's final acceptance of the Product(s) or as specified in the Contract regardless of when or where IMA takes physical possession.

## **27. SURVIVAL**

The rights and obligations pursuant to Section 1 (Confidentiality), Section 6 (Indemnification), Section 10 (Settlements and Disputes), any provision requiring the Contractor to maintain Records or provide access to such Records and any other provision of this Contract Agreement that is by its nature intended to survive the expiration or termination of the Contract Agreement shall survive the expiration or termination of the Contract Agreement.

## **28. SEVERABILITY**

If any one or more provisions of this Contract Agreement shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein shall not be in any way affected or impaired thereby.

## **29. WARRANTY**

(a) Contractor warrants that all the Items and Services furnished hereunder shall:

- (1) conform fully with all requirements of this Order, including any and all specifications, drawings, and performance requirements;
- (2) conform to approved sample or samples, if any;

- (3) unless detailed designs have been furnished by IMA, be fit for the use intended by IMA whether expressed or reasonably implied;
  - (4) be free from defects in material, workmanship, design and fabrication;
  - (5) be free from security interests, liens or encumbrances and of good title; and
  - 6) be performed with that degree of skill and judgment normally exercised by recognized professionals delivering or performing the same or similar Items or Services. In the event that an employee of Contractor should prove to be unsatisfactory during the first 80 billable hours of IMA's project, IMA may request the removal of Contractor's employee from performance of the Order with no billable charges incurred.
- (b) Except for latent defects, Contractor guarantees all Services and Items, parts, components, and assemblies furnished hereunder against any defects in design, material, or workmanship for eighteen (18) months from the date of acceptance at IMA's location. In the case of latent defects, the IMA's rights to corrective action by Contractor shall commence upon IMA's discovery of the latent defect and notification of Contractor thereof.
  - (c) If, within the warranty period, any defect or failure appears, IMA shall have the right to take the following actions:
    - (1) retain such defective Services or Item(s) and an equitable adjustment will be made in the Order price, or
    - (2) reject such defective Services or Item(s) and require Contractor to promptly remove and repair or replace such defective Services or Item(s) at Contractor's sole expense (including shipping costs), with risk of loss and damage for the rejected, corrected or replacement Services and Item(s) while in transit borne by Contractor; or
    - (3) correct or replace such defective Services and Item(s) with similar Services or Item(s) and recover the total cost (including shipping costs) thereof from Contractor. Services or Item(s) rejected shall be removed promptly by Contractor at its expense and its risk. Even if the Parties disagree whether or not Contractor has breached this warranty, Contractor shall promptly comply with IMA's directions to provide warranty work pending resolution of the disagreement.
  - (d) Upon discovery of any defect or failure within the warranty period provided hereby, the following conditions shall apply:
    - (1) IMA shall furnish written notice to Contractor of the Services or Item(s) involved and set forth the nature of the defect(s) or failure(s) discovered;
    - (2) within fifteen (15) days after receipt by Contractor of such notification, Contractor shall provide in writing to IMA the following information:
      - (i) acknowledgment of the notification given by IMA of the defect or failure,
      - (ii) the corrective action to be taken by Contractor to remedy the defect or failure,
      - (iii) disposition instructions regarding the defective material or equipment,
      - (iv) the date that the defective Services and Items will be repaired, corrected or replaced as applicable and redelivered to the appropriate destination as directed by IMA, or
      - (v) with the advance approval of IMA, submit a proposed price reduction to this Order for IMA's consideration pursuant to (c) (1) above.
  - (e) Neither approval by IMA of Contractor's design or material used nor IMA's inspection of same shall relieve Subcontractor from any obligations under the warranties set forth in this Article.

(f) The word “Item(s)” as used herein includes parts, components, assemblies, materials, equipment, services and data required under this Order.

(g) Any Services or Item(s) corrected or replaced pursuant to this Article shall be subject to all provisions of this Article to the same extent as Services and Item(s) initially delivered.

(h) The aforesaid warranties shall survive acceptance and payment and shall run to IMA, its customers and the users of these Services and Item(s) and shall not be deemed to be the exclusive rights of IMA but shall be in addition to other rights of IMA under law, equity, and the terms of this Order.

### **30. CONTRACTOR PERFORMANCE STANDARDS**

(a) Contractor agrees to provide the services required hereunder in accordance with the requirements set forth in this Contract. Contractor undertakes to perform the services hereunder in accordance with the highest standards of professional and ethical competence and integrity in Contractor’s industry and to ensure that employees assigned to perform any services under this subcontract will conduct themselves in a manner consistent therewith. The services will be rendered by Contractor: (1) in an efficient, safe, courteous, and businesslike manner; (2) in accordance with any specific instructions issued from time to time by IMA; and (3) to the extent consistent with items (1) and (2), as economically as sound business judgment warrants. Contractor shall provide the services of qualified personnel through all stages of this Contract. Contractor represents and warrants that it is in compliance with all the applicable laws of the United States and any other Jurisdiction in which the services shall be performed. Contractor shall perform the services as an independent Contractor with the general guidance of IMA. The Contractor’s employees shall not act as agents or employees of IMA.

(b) IMA reserves the right to request the replacement of Contractor personnel and may terminate the Contract due to nonperformance by the Contractor.

(c) IMA will use a variety of mechanisms to stay abreast of the Contractor’s performance under the Contract, and of general progress toward attainment of the Contract objectives. These may include:

- 1) Business meetings between the Contract team, IMA and/or Donor
- 2) Feedback from key partners
- 3) Site visits by IMA personnel
- 4) Meetings to review and assess periodic work plans and progress reports
- 5) Reports

(d) Evaluation of the Contractor's overall performance under this subcontract shall be conducted by IMA. In addition to review of Contractor reports and deliverables, IMA shall review the quality of Contractor performance under this Contract on an annual basis. These reviews will be used to help determine the Contractor's suitability for future contracts. The Contractor will be evaluated for:

Quality and timeliness of work. Provides personnel who are technically qualified, who foster a positive working environment, who are effective on the assignment and contribute to a team effort to accomplish tasks. Delegated tasks are completed in a timely manner. Reports are clear, concise, accurate, well-structured, easily comprehended, submitted on-time and contain actionable recommendations.

Responsiveness to IMA's requests. Maintains open, direct, and responsive communications channels with IMA. Responses are rapid, helpful, accurate, and without undue delays.

Quality of financial management. Demonstrates cost control in meeting Contract requirements. Complies with Donor's cost principles in terms of allowability, allocability and reasonableness of costs.

Quality of Contract administration. Conducts contractually required tasks, such as personnel management, submittal of approval requests, and invoice submission, in a timely, compliant, and accurate manner. Recruitment efforts go beyond a simple review of CVs before submission to IMA to include first-hand contacts with candidates and performing reference checks.

### **31. WAIVER**

The failure by IMA to invoke or enforce any provision of this Contract Agreement shall in no way be considered a waiver of such provisions or in any way affect the validity of this Contract Agreement.

### **32. ENTIRETY OF AGREEMENT**

This Contract Agreement contains the entire agreement of the Parties related to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between the Parties not included herein shall be of any force or effect.

**[ADDITIONAL CLAUSES – INCLUDE FOR USG FUNDED AWARDS – USG CONTRACTS ONLY – E.G. AFYA JIJINI]**

CONTRACT TERMS AND CONDITIONS—COMMERCIAL ITEMS (JAN 2017)

(a) *Inspection/Acceptance.* The Contractor shall only tender for acceptance those items that conform to the requirements of this contract. The Government reserves the right to inspect or test any supplies or services that have been tendered for acceptance. The Government may require repair or replacement of nonconforming supplies or reperformance of nonconforming services at no increase in contract price. If repair/replacement or reperformance will not correct the defects or is not possible, the Government may seek an equitable price reduction or adequate consideration for acceptance of nonconforming supplies or services. The Government must exercise its post-acceptance rights—

(1) Within a reasonable time after the defect was discovered or should have been discovered; and

(2) Before any substantial change occurs in the condition of the item, unless the change is due to the defect in the item.

(b) *Assignment.* The Contractor or its assignee may assign its rights to receive payment due as a result of performance of this contract to a bank, trust company, or other financing institution, including any Federal lending agency in accordance with the Assignment of Claims Act ([31 U.S.C. 3727](#)). However, when a third party makes payment (*e.g.*, use of the Governmentwide commercial purchase card), the Contractor may not assign its rights to receive payment under this contract.

(c) *Changes.* Changes in the terms and conditions of this contract may be made only by written agreement of the parties.

(d) *Disputes.* This contract is subject to [41 U.S.C. chapter 71](#), Contract Disputes. Failure of the parties to this contract to reach agreement on any request for equitable adjustment, claim, appeal or action arising under or relating to this contract shall be a dispute to be resolved in accordance with the clause at FAR [52.233-1](#), Disputes, which is incorporated herein by reference. The Contractor shall proceed diligently with performance of this contract, pending final resolution of any dispute arising under the contract.

(e) *Definitions.* The clause at FAR [52.202-1](#), Definitions, is incorporated herein by reference.

(f) *Excusable delays.* The Contractor shall be liable for default unless nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and

delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after the commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch, and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.

(g) Invoice.

(1) The Contractor shall submit an original invoice and three copies (or electronic invoice, if authorized) to the address designated in the contract to receive invoices. An invoice must include—

- (i) Name and address of the Contractor;
- (ii) Invoice date and number;
- (iii) Contract number, line item number and, if applicable, the order number;
- (iv) Description, quantity, unit of measure, unit price and extended price of the items delivered;
- (v) Shipping number and date of shipment, including the bill of lading number and weight of shipment if shipped on Government bill of lading;
- (vi) Terms of any discount for prompt payment offered;
- (vii) Name and address of official to whom payment is to be sent;
- (viii) Name, title, and phone number of person to notify in event of defective invoice; and
- (ix) Taxpayer Identification Number (TIN). The Contractor shall include its TIN on the invoice only if required elsewhere in this contract.
- (x) Electronic funds transfer (EFT) banking information.

(A) The Contractor shall include EFT banking information on the invoice only if required elsewhere in this contract.

(B) If EFT banking information is not required to be on the invoice, in order for the invoice to be a proper invoice, the Contractor shall have submitted correct EFT banking information in accordance with the applicable solicitation provision, contract clause (*e.g.*, [52.232-33](#), Payment by Electronic Funds Transfer—System for Award Management, or [52.232-34](#), Payment by Electronic Funds Transfer—Other Than System for Award Management), or applicable agency procedures.

(C) EFT banking information is not required if the Government waived the requirement to pay by EFT.

(2) Invoices will be handled in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and Office of Management and Budget (OMB) prompt payment regulations at 5 CFR Part 1315.

(h) *Patent indemnity*. The Contractor shall indemnify the Government and its officers, employees and agents against liability, including costs, for actual or alleged direct or contributory infringement of, or inducement to infringe, any United States or foreign patent, trademark or copyright, arising out of the performance of this contract, provided the Contractor is reasonably notified of such claims and proceedings.

(i) Payment.—

(1) *Items accepted.* Payment shall be made for items accepted by the Government that have been delivered to the delivery destinations set forth in this contract.

(2) *Prompt payment.* The Government will make payment in accordance with the Prompt Payment Act ([31 U.S.C. 3903](#)) and prompt payment regulations at 5 CFR Part 1315.

(3) *Electronic Funds Transfer (EFT).* If the Government makes payment by EFT, see [52.212-5\(b\)](#) for the appropriate EFT clause.

(4) *Discount.* In connection with any discount offered for early payment, time shall be computed from the date of the invoice. For the purpose of computing the discount earned, payment shall be considered to have been made on the date which appears on the payment check or the specified payment date if an electronic funds transfer payment is made.

(5) *Overpayments.* If the Contractor becomes aware of a duplicate contract financing or invoice payment or that the Government has otherwise overpaid on a contract financing or invoice payment, the Contractor shall—

(i) Remit the overpayment amount to the payment office cited in the contract along with a description of the overpayment including the—

(A) Circumstances of the overpayment (*e.g.*, duplicate payment, erroneous payment, liquidation errors, date(s) of overpayment);

(B) Affected contract number and delivery order number, if applicable;

(C) Affected line item or subline item, if applicable; and

(D) Contractor point of contact.

(ii) Provide a copy of the remittance and supporting documentation to the Contracting Officer.

(6) *Interest.*

(i) All amounts that become payable by the Contractor to the Government under this contract shall bear simple interest from the date due until paid unless paid within 30 days of becoming due. The interest rate shall be the interest rate established by the Secretary of the Treasury as provided in [41 U.S.C. 7109](#), which is applicable to the period in which the amount becomes due, as provided in (i)(6)(v) of this clause, and then at the rate applicable for each six-month period as fixed by the Secretary until the amount is paid.

(ii) The Government may issue a demand for payment to the Contractor upon finding a debt is due under the contract.

(iii) *Final decisions.* The Contracting Officer will issue a final decision as required by [33.211](#) if—

(A) The Contracting Officer and the Contractor are unable to reach agreement on the existence or amount of a debt within 30 days;

(B) The Contractor fails to liquidate a debt previously demanded by the Contracting Officer within the timeline specified in the demand for payment unless

the amounts were not repaid because the Contractor has requested an installment payment agreement; or

(C) The Contractor requests a deferment of collection on a debt previously demanded by the Contracting Officer (see [32.607-2](#)).

(iv) If a demand for payment was previously issued for the debt, the demand for payment included in the final decision shall identify the same due date as the original demand for payment.

(v) Amounts shall be due at the earliest of the following dates:

(A) The date fixed under this contract.

(B) The date of the first written demand for payment, including any demand for payment resulting from a default termination.

(vi) The interest charge shall be computed for the actual number of calendar days involved beginning on the due date and ending on—

(A) The date on which the designated office receives payment from the Contractor;

(B) The date of issuance of a Government check to the Contractor from which an amount otherwise payable has been withheld as a credit against the contract debt; or

(C) The date on which an amount withheld and applied to the contract debt would otherwise have become payable to the Contractor.

(vii) The interest charge made under this clause may be reduced under the procedures prescribed in [32.608-2](#) of the Federal Acquisition Regulation in effect on the date of this contract.

(j) *Risk of loss.* Unless the contract specifically provides otherwise, risk of loss or damage to the supplies provided under this contract shall remain with the Contractor until, and shall pass to the Government upon:

(1) Delivery of the supplies to a carrier, if transportation is f.o.b. origin; or

(2) Delivery of the supplies to the Government at the destination specified in the contract, if transportation is f.o.b. destination.

(k) *Taxes.* The contract price includes all applicable Federal, State, and local taxes and duties.

(l) *Termination for the Government's convenience.* The Government reserves the right to terminate this contract, or any part hereof, for its sole convenience. In the event of such termination, the Contractor shall immediately stop all work hereunder and shall immediately cause any and all of its suppliers and subcontractors to cease work. Subject to the terms of this contract, the Contractor shall be paid a percentage of the contract price reflecting the percentage of the work performed prior to the notice of termination, plus reasonable charges the Contractor can demonstrate to the satisfaction of the Government using its standard record keeping system, have resulted from the termination. The Contractor shall not be required to comply with the cost accounting standards or contract cost principles for this purpose. This paragraph does

not give the Government any right to audit the Contractor's records. The Contractor shall not be paid for any work performed or costs incurred which reasonably could have been avoided.

(m) *Termination for cause.* The Government may terminate this contract, or any part hereof, for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance. In the event of termination for cause, the Government shall not be liable to the Contractor for any amount for supplies or services not accepted, and the Contractor shall be liable to the Government for any and all rights and remedies provided by law. If it is determined that the Government improperly terminated this contract for default, such termination shall be deemed a termination for convenience.

(n) *Title.* Unless specified elsewhere in this contract, title to items furnished under this contract shall pass to the Government upon acceptance, regardless of when or where the Government takes physical possession.

(o) *Warranty.* The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.

(p) *Limitation of liability.* Except as otherwise provided by an express warranty, the Contractor will not be liable to the Government for consequential damages resulting from any defect or deficiencies in accepted items.

(q) *Other compliances.* The Contractor shall comply with all applicable Federal, State and local laws, executive orders, rules and regulations applicable to its performance under this contract.

(r) *Compliance with laws unique to Government contracts.* The Contractor agrees to comply with [31 U.S.C. 1352](#) relating to limitations on the use of appropriated funds to influence certain Federal contracts; [18 U.S.C. 431](#) relating to officials not to benefit; [40 U.S.C. chapter 37](#), Contract Work Hours and Safety Standards; [41 U.S.C. chapter 87](#), Kickbacks; [41 U.S.C. 4712](#) and [10 U.S.C. 2409](#) relating to whistleblower protections; [49 U.S.C. 40118](#), Fly American; and [41 U.S.C. chapter 21](#) relating to procurement integrity.

(s) *Order of precedence.* Any inconsistencies in this solicitation or contract shall be resolved by giving precedence in the following order:

- (1) The schedule of supplies/services.
- (2) The Assignments, Disputes, Payments, Invoice, Other Compliances, Compliance with Laws Unique to Government Contracts, and Unauthorized Obligations paragraphs of this clause;
- (3) The clause at [52.212-5](#).
- (4) Addenda to this solicitation or contract, including any license agreements for computer software.
- (5) Solicitation provisions if this is a solicitation.

- (6) Other paragraphs of this clause.
- (7) The [Standard Form 1449](#).
- (8) Other documents, exhibits, and attachments.
- (9) The specification.
- (t) System for Award Management (SAM).

(1) Unless exempted by an addendum to this contract, the Contractor is responsible during performance and through final payment of any contract for the accuracy and completeness of the data within the SAM database, and for any liability resulting from the Government's reliance on inaccurate or incomplete data. To remain registered in the SAM database after the initial registration, the Contractor is required to review and update on an annual basis from the date of initial registration or subsequent updates its information in the SAM database to ensure it is current, accurate and complete. Updating information in the SAM does not alter the terms and conditions of this contract and is not a substitute for a properly executed contractual document.

(2)(i) If a Contractor has legally changed its business name, "doing business as" name, or division name (whichever is shown on the contract), or has transferred the assets used in performing the contract, but has not completed the necessary requirements regarding novation and change-of-name agreements in FAR [subpart 42.12](#), the Contractor shall provide the responsible Contracting Officer a minimum of one business day's written notification of its intention to (A) change the name in the SAM database; (B) comply with the requirements of [subpart 42.12](#); and (C) agree in writing to the timeline and procedures specified by the responsible Contracting Officer. The Contractor must provide with the notification sufficient documentation to support the legally changed name.

(ii) If the Contractor fails to comply with the requirements of paragraph (t)(2)(i) of this clause, or fails to perform the agreement at paragraph (t)(2)(i)(C) of this clause, and, in the absence of a properly executed novation or change-of-name agreement, the SAM information that shows the Contractor to be other than the Contractor indicated in the contract will be considered to be incorrect information within the meaning of the "Suspension of Payment" paragraph of the electronic funds transfer (EFT) clause of this contract.

(3) The Contractor shall not change the name or address for EFT payments or manual payments, as appropriate, in the SAM record to reflect an assignee for the purpose of assignment of claims (see [subpart 32.8](#), Assignment of Claims). Assignees shall be separately registered in the SAM database. Information provided to the Contractor's SAM record that indicates payments, including those made by EFT, to an ultimate recipient other than that Contractor will be considered to be incorrect information within the meaning of the "Suspension of payment" paragraph of the EFT clause of this contract.

(4) Offerors and Contractors may obtain information on registration and annual confirmation requirements via SAM accessed through <https://www.acquisition.gov>.

(u) Unauthorized Obligations

(1) Except as stated in paragraph (u)(2) of this clause, when any supply or service acquired under this contract is subject to any End User License Agreement (EULA), Terms of Service (TOS), or similar legal instrument or agreement, that includes any clause requiring the Government to indemnify the Contractor or any person or entity for damages, costs, fees, or any other loss or liability that would create an Anti-Deficiency Act violation (31 U.S.C. 1341), the following shall govern:

(i) Any such clause is unenforceable against the Government.

(ii) Neither the Government nor any Government authorized end user shall be deemed to have agreed to such clause by virtue of it appearing in the EULA, TOS, or similar legal instrument or agreement. If the EULA, TOS, or similar legal instrument or agreement is invoked through an “I agree” click box or other comparable mechanism (e.g., “click-wrap” or “browse-wrap” agreements), execution does not bind the Government or any Government authorized end user to such clause.

(iii) Any such clause is deemed to be stricken from the EULA, TOS, or similar legal instrument or agreement.

(2) Paragraph (u)(1) of this clause does not apply to indemnification by the Government that is expressly authorized by statute and specifically authorized under applicable agency regulations and procedures.

(v) Incorporation by reference. The Contractor’s representations and certifications, including those completed electronically via the System for Award Management (SAM), are incorporated by reference into the contract.