

## Skills for Prosperity in South East Asia Programme (SfP-SEA) – Malaysia

# Terms of Reference (TOR) for National Consultancy – Review of Institutional Mechanism for Industry Engagement in TVET / Skills Training (Service Contract)

## 1. Background

The Skills for Prosperity in South East Asia Programme (SfP-SEA) aims to contribute to increasing national capacity to achieve sustained and inclusive growth through the enhancement of skills development and technical and vocational education and training (TVET) systems in Malaysia, Indonesia, and the Philippines.

To achieve this objective, the programme works with government agencies, employers' organisations, trade unions, educational institutions and other partners in Malaysia, Indonesia and the Philippines to facilitate review and reform of the countries' skills development and TVET policies and systems. In the region, the SfP-SEA provides opportunities for mutual learning among the three countries and the other ASEAN nations, and beyond—not only showcasing the results of the pilots and lessons learned from the programme but also facilitating the sharing of best practices in the region and other parts of the world.

In Malaysia, the Programme focuses on increasing skills development and TVET systems' readiness to meet the skills needs of the future of work and those of vulnerable groups, through enhancing four areas of the TVET system and delivery:

- **Equity:** Inclusiveness in skills development and TVET systems
- **Quality:** Future-ready & coordinated skills development and TVET systems
- **Relevance:** Demand-driven skills and TVET/skills recognition
- **Cost-Effectiveness:** Improved skills/TVET financing models

The SfP Malaysia Project focuses on TVET inclusiveness, quality, relevance and readiness whilst addresses skills mismatch issues in the area of critical needs for skills development and TVET to support the industry development and socio-economic progress. It intends to assist national partners in improving policies to ensure industry-led TVET in public and private sectors and increase employment and career progress opportunities for TVET students at national and sub-national levels. The national and sub-national activities at two states, namely Sabah and Kedah, will target:

- **The primary beneficiaries:** youths (ages 16-25) and women; and
- **Other beneficiaries (vulnerable groups):**
  - Members of the B40
  - Persons with Disabilities
  - Individuals Not In Employment Education or Training (NEET)
  - Small and medium-sized enterprises (SMEs)
  - Workers in the informal economy

- Self-employed individuals
- individuals employed in the gig economy

Under the Relevance pillar, the SfP Malaysia Project will conduct review of the past and existing experiences of similar institutional arrangements, aiming to deeply understand the mechanism of industry engagement in TVET and skills development in Malaysia in the two selected sectors. The results of this analysis will be utilized to refine activities to improve or develop viable institutional mechanisms for industry engagement in TVET/skills training in Malaysia.

## **2. Objective**

The objectives of this analysis are to:

- Examine the roles and responsibilities of industry in the skills development system of Malaysia and describe the mechanisms and institutions through which those roles are fulfilled, in comparison with international good practices;
- Assess the achievements and challenges of existing institutions for industry engagement in TVET, including key success factors and barriers to identify suitable, feasible and sustainable options of institutional mechanism for more effective engagement;
- Provide decision-making tools and options for stakeholders to identify suitable institutional mechanism in Malaysia;
- Refine work plans to improve or develop viable institutional mechanisms.

## **3. Scope of Work**

Under the supervision of Chief Technical Advisor and with guidance from Senior Project Officers, regional specialists of the ILO, the main responsibility of the contractor is to conduct the review of institutional mechanism for industry engagement in TVET at the national level for the construction and manufacturing sectors. The contractor should also incorporate technical inputs from an international consultant, who conduct international comparative analysis of institutions for industry engagement in TVET.

The contractor is required to:

- a) Identify key existing institutions for industry engagement in TVET/skills training in Malaysia, in particular in the construction and manufacturing (e.g., food processing industry) sectors.
- b) Prepare a comprehensive desktop review on inventory of the past and existing formal and informal institutional mechanism for industry engagement in TVET and skills training in Malaysia, focusing on the construction and manufacturing (e.g., food processing industry) sectors experiences of similar institutional arrangement based on the roles and responsibilities in the TVET and skills development system of Malaysia.
- c) Examine the roles, achievements, and challenges of those past and existing institutions by conducting in-depth interviews with relevant government agencies, employers' and workers' organizations, and industry.
- d) Compare the roles of past and existing institutions for industry engagement in TVET and skills training in Malaysia with other countries models, which an international consultant

will examine, and present options of viable models and provide decision-making tools to assist the national partners in identifying viable institutional mechanisms in Malaysia. The tools may include structural requirements for each type of institutions, such as functions, management structure, resources (e.g., infrastructure, funding, and staffing), supporting legal framework and rough roadmaps to develop each institutional mechanism in Malaysia.

- e) Provide national partners of the Project with the opportunities to understand achievement and challenges of past and existing institutions for industry engagement in TVET/skills training and explore viable mechanisms in Malaysia through seminars or workshops.
- f) Provide a preliminary proposal on the roles of steering committee(s) for an enhanced institutional mechanism for industry engagement in TVET and skills training and the functions and structure of the mechanism, based on which the national partners of the Project can decide their next course of actions.
- g) Provide strategic advice and inputs on the Project's implementation plan for the development or improvement of institutional mechanism for industry engagement in TVET, including: (i) potential implementation partners for activities; (ii) potential industry leaders or champion enterprises; and (iii) potential risks for project activities.

#### **4. Methodologies**

The study may apply multiple method as follows:

- Preliminary information gathering via desk / literature review.
- Qualitative research (multiple case study) by engaging with industrial experts via on-line or physical interview with government and industry representatives who are involved in the TVET and skills development system in Malaysia. The mechanisms and institutions to be reviewed include but are not limited to:
  - Industry and government-led skills bodies in the skills development system (e.g., MEF Academy, FMM Institute, the Master Builders Association Malaysia (MBAM), the Department of Skills Development (DSD)'s Industry Lead Body, the Human Resource Development Fund (HRDF)'s Sectoral Training Committee, the Construction Industry Development Board (CIDB)'s Skills Standard Development Panel, etc.).
  - Sectoral regulatory bodies related to the quality assurance of training organisations / programmes (e.g., CIDB, the Department of Occupational Safety and Health, Department of Islamic Development Malaysia (JAKIM), Food Safety & Quality Division in the Department of Public Health, etc.).
  - Organisations or committees involved in the development of skill standards, curriculum and/or qualifications (e.g., DSD, Malaysian Qualifications Agency (MQA), CIDB, etc.).
  - Apprenticeship councils or boards (e.g., HRDF, the Malaysian Investment Development Authority (MIDA)'s Apprenticeship Programmes, etc.).
  - Centres of excellence and training institution advisory/management boards.
  - Councils or boards of national or sectoral training funds.
  - National labour market research institutions or other organisations involved in skills anticipation (e.g., the Institute of Labour Market Information Analysis (ILMIA), Talent Corporation, etc.).
  - National bodies involved in the governance of TVET and skills training recognition and qualifications (e.g., DSD and MQA).

## 5. Outputs

The contractor is required to produce the following outputs:

### Interim Outputs (within the first 24 days)

- 1) The written interim report in a suitable format which includes:
  - Preliminary findings of qualitative analysis of the past and existing experiences of similar institutional arrangement based on the roles and responsibilities of industry in the skills development system of Malaysia, regarding information required in section 3 of this TOR.
  - Preliminary reports on consultation, including summaries of interviews and small group discussions with stakeholders.
- 2) Presentation of the interim outputs in a suitable presentation format (e.g., PowerPoint).
- 3) The brief report of a seminar/workshop with the national partners of the Project.

### Final Outputs

- 1) The final report in a suitable format which includes (see section 3 of this TOR for details of requirements):
  - Comprehensive review on of the past and existing experiences of institutional arrangements for industry engagement in TVET, based on the roles and responsibilities of industry in the skills development system of Malaysia.
  - Decision-making tables or matrix in an appropriate form, which assists the national partners in identifying viable institutional mechanisms in Malaysia, taking into account structural requirements for each type of institutions, such as functions, management structure, resources, and rough roadmaps to develop each institutional mechanism in Malaysia.
  - Seminar or workshop reports on the final report presentation.
  - Draft Terms of References for establishment of steering committee(s) for an enhanced institutional mechanism for industry engagement in TVET and skills training and preliminary idea on the functions and structure of the mechanism.
  - Strategic advice and inputs on the programme strategies and work plans.
  - Full consultation summaries of interviews with stakeholders.
- 2) Presentation of the final outputs in a suitable presentation format (e.g., PowerPoint).

## 6. Timeline

The estimated number of workdays for this consultancy as indicated in the above section 3 is 45 days spreading over 3 months tentatively from 26 January 2021 until 25 April 2021. The starting date and workdays will be finalized after completion of the hiring process.

Below are the targets dates to produce outputs:

Tasks	No. of days	Location	Output
1. Initial meeting with the ILO to agree on the overall plan and ways of working.	1	KL	<b>Work plan, Draft outline of the final report</b>
2. Kick-off meetings with key national partners such as MOHR (DSD & HDRF), CIDB, MEF, MBAM and FMM.	1	KL/On-line	Revised work plan

Tasks	No. of days	Location	Output
3. Develop the qualitative research methods and plan.	2	Home	Research plan
4. Desk review of the past and existing experiences of similar institutional arrangement based on the roles and responsibilities of industry in the skills development system of Malaysia.	5	Home	List of institutions with their functions and responsibilities
5. Prepare for in-depth interviews with respective institutions, experts, and stakeholders.	2	Home	Interview guides / questionnaires, list of target interviewees
6. Conduct in-depth interviews with respective institutions to examine the roles, achievements, and challenges of those past and existing institutions.	8	Home, KL/On-line	Interview data and the results of analysis.
7. Draft the interim report and submit it to the ILO for review.	3	Home	The draft interim report
8. Organise workshop and present interim results and analysis to identify suitable mechanism for institutional framework to SfP Malaysia team and key national partners and summarise the key points of discussion.	2	KL/On-line	<b>The written interim report and presentation materials by 1 March 2021</b>
9. Draft the final report which provides the comprehensive analysis of the roles of past and existing institutions for industry engagement in TVET and skills training in Malaysia, comparison with other countries models, and decision-making tools to assist the national partners in identifying viable institutional mechanisms in Malaysia.	4	Home	1 <sup>st</sup> draft report
10. Submit the report to the ILO and revise it by incorporating the feedback.	1	Home	
11. Plan and organize a seminar/workshop and make presentation of 1 <sup>st</sup> draft report to the SfP Malaysia team and key national partners.	2	KL/On-line	<b>The written 1<sup>st</sup> draft report and presentation materials by 10 March 2021</b>
12. Revise the 1 <sup>st</sup> draft report incorporating the feedback from the ILO and national partners.	3	Home	Revised 1 <sup>st</sup> draft report
13. Develop structural requirements for implementing the proposed institutional option (resource requirements e.g., infrastructure, funding, staffing; management functions, structural considerations, etc.).	4	Home	Summary of structural requirements for industry skills councils
15. Develop draft Terms of References for establishment of steering committee(s) and roles and functions the industry skills councils	3	Home	<ul style="list-style-type: none"> <li>• Draft TOR for steering committee</li> <li>• Draft TOR for an enhanced institution for industry engagement in TVET</li> </ul>
16. Draft the draft final report, which includes strategic advice and inputs on the Project's implementation plan.	3	Home	<b>The final report on 14 April 2021</b>
17. Revise and finalize the report by incorporating the feedback from the ILO.	1	Home	<b>The revised final report</b>

Tasks	No. of days	Location	Output
Total	45		

## 7. Required Qualifications

The assignment should be carried out by a contractor who should have team members with the following qualifications:

**Education:** Advanced university degree in economics, social sciences, public administration or statistics, with expertise in the field of industrial development, policy review, and TVET/skills development.

**Experience:**

- A minimum of five years of experience in working on industrial development and/or skills development and TVET.
- Experience in carrying out qualitative research, in particular multiple case studies.
- Experience in producing high-quality reports in English.
- Experience in working with industry, in particular employers' and workers' organizations.
- Experience in working with government agencies responsible for TVET/skills training and industrial policies.
- Experience in organising high-level consultation workshops.
- Experience in working for international organisations.

**Qualifications:**

- Excellent understanding of situations related to industrial development and/or human capital / education policy review, and TVET/skills development in area of skills development in Malaysia.
- Excellent analytical and writing skills in English.
- Solid understanding and skills on qualitative research methods.
- Strong interpersonal and communication skills to engage with the SfP-Malaysia constituents and stakeholders.
- Ability to use a variety of computer applications and software to carry out data collection and analysis

**Languages:** Excellent command of English and Malay.

## 8. Application

Interested companies must submit the following documents/ information to demonstrate their qualifications.

- Technical proposal describing how the contractor will approach and conduct the work including the number of days (5 pages maximum)
- List of team members with brief explanation of experience relevant to this assignment and Curriculum Vitae
- One writing sample related to this assignment, such as a report or paper.
- Estimated budget (financial proposal), including professional fees (daily rate and expected number of working days) and other expenses (e.g., transportation costs), for completing the work.

The interested companies are requested to submit the above documents electronically to [jmori@ilo.org](mailto:jmori@ilo.org) and [mohdbadrin@ilo.org](mailto:mohdbadrin@ilo.org) by **15 January 2021 by 4:00 pm MYT.**

The short-listed candidates will be contacted and be asked to submit the outline of the final report.

## **9. Contract Duration**

The contract will commence tentatively from 26 January 2021 until 25 April 2021. The actual date will be finalized after completion of the hiring process.

## **10. Indicative Payment Terms**

Payment terms will be as follows:

- 1st payment: 10% upon the delivery and acceptance of workplan.
- 2nd payment: 45% upon the delivery and acceptance of the interim output.
- 3rd payment: 45% upon the delivery and acceptance of the final output.

## **Attachment**

- Terms and conditions applicable to contract for services





## TERMS AND CONDITIONS APPLICABLE TO ILO CONTRACTS FOR SERVICES

### 1. THE PARTIES

- 1.1. **LEGAL STATUS OF THE PARTIES:** The International Labour Organization, represented by the International Labour Office (ILO), and the Contractor (referred to individually as a “**Party**” and together as the “**Parties**”) have the following legal status:
- 1.1.1. The International Labour Organization has full juridical personality, including the ability to contract and enjoys such privileges and immunities as are necessary for the independent fulfilment of its purposes pursuant to the *Constitution of the International Labour Organisation*. Nothing in or related to the Contract will be deemed a waiver of any of the privileges and immunities of the International Labour Organization recognized in the Convention on the Privileges and Immunities of the Specialized Agencies (1947), and relevant national and international law.
- 1.1.2. The Contractor is an independent contractor. Nothing contained in or relating to the Contract will be construed as establishing or creating between the Parties the relationship of employer and employee or of principal and agent.

### 2. CONTRACT DOCUMENTS AND VALIDITY

- 2.1. **NATURE OF THE CONTRACT:**
- 2.1.1. The Contract constitutes the complete and exclusive agreement between the Parties. It supersedes all proposals, verbal or written arrangements or agreements, and any other communications by one of the Parties or between the Parties relating to the Contract.
- 2.1.2. The Contract is composed of the following documents listed in their order of precedence:
- 2.1.2.1. **Purchase Order/Contract Document**, including any specific conditions;
- 2.1.2.2. Terms and Conditions applicable to ILO Contracts for Services ; and
- 2.1.2.3. Any other document explicitly listed in the Purchase Order/Contract Document and attached to it (i.e., **Annex 1, 2**, etc).
- 2.1.3. Unless otherwise included in any of the documents listed in paragraph 2.1.2., the terms of business, conditions of contract, general reservations published or issued by the Contractor or written in any correspondence or documents emanating from the Contractor will not form part of the Contract.
- 2.2. **VALIDITY:** The Contract will expire upon fulfilment by the Parties of their respective obligations or otherwise in accordance with its provisions.
- 2.3. **NON-EXCLUSIVITY:** The ILO may contract for works or services (referred together to as “**Services**”) of the same or similar kind and quality described in the Contract from any other source at any time.
- 2.4. **COMMUNICATIONS:** Communications (e.g., notices, documents) will be addressed to:

**INTERNATIONAL LABOUR OFFICE**  
Procurement Bureau (PROCUREMENT)  
4 Route des Morillons  
CH 1211 Geneva 22  
Switzerland  
Facsimile: + (41)(22) 798 85 29  
Phone: + (41)(22) 799 76 02  
e-mail: [pcrt@ilo.org](mailto:pcrt@ilo.org)

### 3. PRICE AND PAYMENT

- 3.1. **PRICE AND CURRENCY:** The price and currency specified in the Contractor's offer are firm and not subject to revision. The ILO's financial liability under the Contract is restricted to the price and currency indicated in the Purchase Order/Contract Document.
- 3.2. **PAYMENT:** Upon receipt of the Contractor's written invoice and any related supporting documentation, the ILO will effect payment, normally within thirty (**30**) days, by bank transfer (the ILO will not pay through letters of credit or bank draft). The written invoice will be sent to the addressee specified in the Purchase Order/Contract Document and will contain the:
- 3.2.1. number of the Purchase Order/Contract Document that it relates to;
- 3.2.2. invoiced amount (without the rounding of currency decimals and exclusive of VAT, duties or charges); and
- 3.2.3. date of the completion of Services.





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

- 3.3. **TAX EXEMPTION:** The International Labour Organization, as a United Nations Specialized Agency, enjoys a special tax status in Switzerland and in other member States. Except with the prior written authorization of the ILO, invoices will be submitted exclusive of any amount representing taxes (including value added tax), duties or charges. Where such authorization has been provided, the Contractor will provide the ILO with written evidence that payment of such taxes, duties or charges has been made. In the event any government authority refuses to recognize the ILO's exemption from such taxes, duties or charges, the Contractor will immediately consult with the ILO to determine a mutually acceptable procedure.

#### 4. PERFORMANCE

- 4.1. **ITEMS FURNISHED BY THE CONTRACTOR:** The Contractor is solely responsible for the arrangement, provision and operation of all equipment, supplies, related support services and personnel (including any related costs so incurred) necessary for the performance of the Contractor's obligations under the Contract.
- 4.2. **ITEMS FURNISHED BY THE ILO TO THE CONTRACTOR:** Where goods and equipment (referred together as "**Goods**") are funded or provided by the ILO to the Contractor to support the performance of the Contractor's obligations under the Contract, the following terms apply:
- 4.2.1. The Contractor acknowledges and agrees that the ILO hereby disclaims any and all warranties regarding the functionality or installation of such Goods. The Contractor is solely responsible for the installation (including any personnel, tools, materials or other Goods necessary for installation), maintenance and functioning of all the Goods funded or provided by the ILO under the Contract.
- 4.2.2. The Contractor will promptly report to the ILO each loss, damage or theft of such Goods.
- 4.2.3. Title to the Goods that may be funded or provided by the ILO to the Contractor will be retained by the ILO. The Contractor will not cause or permit any lien, claim or other encumbrance to be attached to any or all such Goods, or to any other item that is the subject matter of the Contract.
- 4.2.4. Upon the termination or expiration of the Contract, all such Goods will be returned to the ILO in the same condition as when delivered to the Contractor, excluding normal wear and tear. The return of such Goods, or other disposal as the ILO may direct, will be at the Contractor's expense. Upon termination or expiration of the Contract, the Contractor will take all reasonable measures to avoid any loss of or deterioration to such Goods. The Contractor will compensate the ILO for actual costs of any loss of, damage to or deterioration of such Goods that is beyond normal wear and tear.
- 4.3. **INSTALLATION, MAINTENANCE, TRAINING:** Where installation, maintenance (ongoing or as specified in the Purchase Order/Contract Document) or training is required, the following terms apply:
- 4.3.1. The Contractor, in a timely manner, will arrange for and provide all equipment, supplies, related support services and personnel necessary to complete the installation, maintenance or training.
- 4.3.2. All costs related to the installation, maintenance or training will be borne by the Contractor.
- 4.3.3. The ILO and the Consignee will be permitted to monitor the installation or maintenance work, as well as to oversee the training.
- 4.3.4. In addition, where training is required the Contractor will train any persons identified by ILO or the Consignee in the installation, operation, maintenance, etc. of the Services described in the Contract.
- 4.4. **ACCESS:** If some or all of the contractual obligations will be performed on ILO premises, the ILO will facilitate access to its premises in line with requirements for such performance. The Contractor will comply with ILO security requirements and any other relevant ILO rules, regulations and guidelines while on ILO premises, as well as with the instructions given by designated ILO officials.
- 4.5. **RESPONSIBILITY FOR PERSONNEL:**
- 4.5.1. The employees, officials, representatives, staff or subcontractors (**Personnel**) of either of the Parties will not be considered in any respect as being the employees or agents of the other Party.
- 4.5.2. Each Party is solely responsible for the professional and technical competence of its respective Personnel, which will permit that Party to effectively perform its obligations under the Contract.
- 4.5.3. Without prejudice to any other right or remedy available under the Contract, the ILO reserves the right to request at any time, in writing, the withdrawal or replacement of any of the Contractor's Personnel and such request will not be unreasonably refused by the Contractor.
- 4.5.4. Each Party is solely responsible for all claims arising out of or relating to the engagement of its respective Personnel.
- 4.5.5. All expenditures related to the assignment of the Contractor's Personnel, including allowances, insurance, cost of travel arrangements and local transport will be borne by the Contractor. All expenditures related to the assignment of the ILO's Personnel, including allowances, insurance, cost of travel arrangements and local transport will be borne by the ILO.



#### 4.6. **INSURANCE:**

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

#### 4.7. **INDEMNIFICATION:**

- 4.7.1. The Contractor is solely responsible for any claim or damage resulting from the negligence, acts, or omissions of its Personnel.
- 4.7.2. The Contractor will indemnify and hold the ILO harmless from and against any direct or indirect responsibilities, complaints, claims (including intellectual property rights infringement), suits, judgments, damages and losses, including costs, fees and related expenses, in respect of any physical injury, damage to property, theft, or economic or other prejudice suffered by the ILO, its Personnel or third-parties which may result from the performance of the Contractor's obligations under the Contract or the Contractor's acts or omissions or those of the Contractor's Personnel.
- 4.7.3. The Contractor will immediately notify the ILO upon becoming aware of any direct or indirect responsibilities, complaints, claims (including intellectual property rights infringement), suits, judgments, damages and losses, including costs, fees and related expenses, in respect of any physical injury, damage to property, theft, or economic or other prejudice suffered by the ILO or which could adversely affect the ILO.

### 5. **ASSIGNMENT AND SUBCONTRACTING**

- 5.1. **ASSIGNMENT:** The Contractor may not assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of any of the rights, claims or obligations under the Contract except with the prior written authorization of the ILO. Any such unauthorized assignment, transfer, pledge or other disposition, or any attempt to do so, will not be binding on the ILO.
- 5.2. **SUBCONTRACTING:** In the event that the Contractor requires the services of any subcontractor, the Contractor will obtain the prior written authorization to subcontract and the approval of the ILO of the subcontractor selected. The authorization and approval by the ILO of such a subcontractor does not relieve the Contractor of any of its obligations under the Contract and the Contractor is solely responsible for the Services provided by a subcontractor in the framework of the Contract, including their quality. The Contractor, to the same extent as for its own Personnel, will be liable for a subcontractor and its Personnel who are performing any part of the Contractor's obligations under the Contract. The terms of any subcontract will be subject to and be in conformity with the provisions of the Contract. Except with the prior written authorization to subcontract and the approval of the ILO of the subcontractor selected, the Contractor will ensure that its subcontractor(s) do not subcontract, assign, transfer, pledge or make any other disposition of the Contract, of any part of the Contract, or of



any of the rights, claims or obligations under the Contract. The provisions of this paragraph apply to any subcontractor who, in turn, requires the services of a subcontractor.

## 6. INTELLECTUAL PROPERTY RIGHTS AND CONFIDENTIALITY

### 6.1. PROPRIETARY ITEMS AND INTELLECTUAL PROPERTY RIGHTS:

- 6.1.1. All documents (including drawings, estimates, manuscripts, maps, plans, records, reports, recommendations) and other proprietary items (including data, devices, gauges, jigs, mosaics, parts, patterns, photographs, samples, and software) (jointly referred to as **Proprietary Items**), either developed by the Contractor or its Personnel in connection with the Contract or furnished to the Contractor by or on behalf of the ILO to support the performance of the Contractor's obligations under the Contract, are the exclusive property of the International Labour Organization; and, will be used by the Contractor and its Personnel solely for the purposes of the Contract.
- 6.1.2. All intellectual property rights and all other proprietary rights (including copyrights, patents, trademarks, source codes, products, processes, inventions, ideas, know-how) with regard to any materials (jointly referred to as **Intellectual Property**), either developed by the Contractor or its Personnel in connection with the Contract or furnished to the Contractor by or on behalf of the ILO to support the performance of the Contractor's obligations under the Contract, are the exclusive property of the International Labour Organization; and, will be used by the Contractor and its Personnel solely for the purposes of the Contract.
- 6.1.3. During the course of development, Proprietary Items and Intellectual Property developed or utilized by or furnished to the Contractor will be made available for use and inspection by the ILO, upon request at reasonable times and in reasonable places.
- 6.1.4. Such Proprietary Items and Intellectual Property will be delivered only to ILO authorized officials on completion of the Contract.
- 6.1.5. The Contractor will disclose, throughout its performance, to the ILO's authorized officials full particulars of all source codes, products, processes, inventions, ideas, know-how, documents and any other materials developed or conceived by the Contractor, alone or jointly, in connection with the Contract.
- 6.1.6. At the request of the ILO, the Contractor will take all necessary steps to execute all necessary documents and generally assist the ILO in securing intellectual property rights and all other proprietary rights in compliance with the requirements of applicable law.
- 6.1.7. To the extent that any Intellectual Property due to the ILO under paragraph **6.1.2** includes any intellectual property:
  - 6.1.7.1. of the Contractor that: (i) pre-existed the performance by the Contractor of its obligations under the Contract; or (ii) it may develop or acquire, or that may have been developed or acquired, independently of the performance of the Contractor's obligations under the Contract; or
  - 6.1.7.2. of a third-party;the Contractor grants to the International Labour Organization a perpetual, royalty-free license to make unrestricted use of such intellectual property. The International Labour Organization will not claim any ownership interest in the intellectual property described in subparagraphs **6.1.7.1** or **6.1.7.2**.
- 6.1.8. The Contractor undertakes to obtain, at its own expense, permission to use any third-party protected rights that are necessary for the performance of the Contract and, if requested, provide the ILO with evidence of such permission.
- 6.1.9. In the event that any Proprietary Items or Intellectual Property provided to the ILO by the Contractor are for some reason enjoined or found to infringe any rights of a third-party, or in the event of a settlement, are enjoined, limited or otherwise interfered with, then the Contractor, at its sole cost and expense, will promptly:
  - 6.1.9.1. procure for the ILO the unrestricted right to continue using such Proprietary Items and Intellectual Property provided to the ILO;
  - 6.1.9.2. replace or modify the Proprietary Items and Intellectual Property provided to the ILO, or part thereof, with the equivalent or better Proprietary Items and Intellectual Property, or part thereof, that are non-infringing; or,
  - 6.1.9.3. refund to the ILO the full price paid by the ILO for the right to have or use such Proprietary Items and Intellectual Property or part thereof.

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

- 6.2.1. Unless otherwise made public with the authorization of the ILO, Proprietary Items, Intellectual Property and other information, irrespective of what form they are, developed, collected, known, marked or received by the Contractor, will be treated by the Contractor as confidential and be used only for the purposes of the Contract.
- 6.2.2. The Contractor will not communicate at any time to any other person, government or entity external to the ILO, any Proprietary Items, Intellectual Property or other information known by reason of its association with the ILO, which has not been made public, except with the authorization of the ILO; nor will the Contractor at any time use such



information for private advantage or in any manner prejudicial to or incompatible with the interests of the ILO. Where the Contractor is required by law to disclose such Proprietary Items, Intellectual Property or other information, it will give the ILO sufficient prior notice of the request to disclose in order to allow the ILO to have a reasonable opportunity to take protective measures or such other action as may be appropriate.

6.2.3. The Contractor will be responsible for such Proprietary Items, Intellectual Property and other information. In case of loss of or damage to any Proprietary Items, Intellectual Property or other information the Contractor may be required to:

6.2.3.1. replace or repair the lost or damaged Proprietary Items, Intellectual Property or other information; or

6.2.3.2. provide compensation to the ILO for the cost of replacing or repairing the lost or damaged Proprietary Items, Intellectual Property or other information.

**6.3. PUBLICITY AND USE OF THE NAME, EMBLEM OR OFFICIAL SEAL:**

6.3.1. The Contractor may neither disclose the terms and conditions of the Contract nor advertise or otherwise make public the fact that it is a Contractor to the ILO.

6.3.2. The Contractor may not use or reproduce the name, emblem or the official seal of the International Labour Organization or of the International Labour Office, including their abbreviations, in connection with the Contractor's business or otherwise.

6.3.3. In reporting its procurement activities, the ILO may publish (e.g., on the internet) the Contractor's name and amount of the Contract.

## **7. ETHICAL CONDUCT**

**7.1. LABOUR CLAUSES:** The Contractor undertakes to respect, at all times and in all circumstances relevant to the performance of the Contract and in relation to all its Personnel, and to ensure that its subcontractors respect:

7.1.1. The following principles concerning international labour standards of the International Labour Organization:

7.1.1.1. the freely-exercised right of workers, without distinction, to organize, further and defend their interests and to bargain collectively, as well as the protection of those workers from any action or other form of discrimination related to the exercise of their right to organize, to carry out trade union activities and to bargain collectively;

7.1.1.2. the prohibition of forced or compulsory labour in all its forms;

7.1.1.3. equal remuneration for men and women for work of equal value;

7.1.1.4. equality of opportunity and treatment in respect of employment and occupation without discrimination on grounds of race, colour, sex, religion, political opinion, national extraction or social origin and such other ground as may be recognized under the national law of the country or countries where the performance, in whole or in part, of the Contract takes place;

7.1.1.5. the prohibition of the employment of children below fourteen (14) years of age or, if higher than fourteen (14), the minimum age of employment permitted by the law of the country or countries where the performance, in whole or in part, of the Contract takes place, or the age of the end of compulsory schooling in that country or countries, whichever is higher;

7.1.1.6. the prohibition of the employment of persons under the age of eighteen (18) for work that, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of such persons;

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

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

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

7.1.2. All applicable laws or regulations concerning terms of employment and conditions of work, any collective agreements to which it is party, or any other related measure with which it must comply.

**7.2. PERSONNEL NOT TO BENEFIT:**



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

## 8. FULL DISCLOSURE

- 8.1. **FULL DISCLOSURE:** The Contractor warrants that it has made and will make full and proper disclosure to the ILO of all relevant information relating to its business activities, financial condition and ownership, prior to entering into this Contract and for its duration, including that it is not identified on or associated with<sup>1</sup> any individual, groups, undertakings and entities identified on the list established by the United Nations Security Council Resolution 1267 (**1267 Consolidated List**)<sup>2</sup>; and that it is not, nor has been, subject to any sanction or temporary suspension imposed by any organization within the United Nations System including the World Bank.

## 9. DELAY, FORCE MAJEURE AND LIQUIDATED DAMAGES

- 9.1. **DELAY:**
- 9.1.1. Should the Contractor encounter conditions that do not constitute *Force majeure* and which impede or are likely to impede timely performance of the Contract (**Delay**), the Contractor will immediately notify the ILO in writing with full particulars of the Delay, including its likely duration, and its cause. At the ILO's request, the Contractor and the ILO will consult as soon as practicable after receipt of such notice, to evaluate any available means of mitigation or appropriate remedies provided under the Contract.
  - 9.1.2. In addition to any other right or remedy available under the Contract, upon receiving notice of Contractor's Delay (or likely Delay) in performance, the ILO will have the right to:
    - 9.1.2.1. suspend the Contract, in whole or in part, and notify the Contractor not to proceed further with its performance which has been subject to (or will be subject to) Delay;
    - 9.1.2.2. withhold and/or deduct payment to the Contractor for the portion of the Contract subject to Delay; and
    - 9.1.2.3. procure all or part of the Services which the Contractor fails to provide in a timely manner.
  - 9.1.3. Without prejudice to any other right or remedy available under the Contract, the Contractor will be liable for any increase in the price payable by the ILO resulting from the procurement of the Services from other sources and the ILO may apply such additional costs incurred, by deduction or otherwise, against future amounts owed by the ILO to the Contractor.



9.1.4. Upon receipt of notice of any decision by the ILO to suspend the Contract under subparagraph 9.1.2.1 and with respect to the suspended portion of the Contract, the Contractor will take immediate steps to reduce expenses to a minimum and will not undertake any further obligations; provided, however, that the ILO and the Contractor will continue performance of the Contract to the extent that it is not suspended or cancelled.

**9.2. FORCE MAJEURE:**

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

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

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

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

9.4. **LIQUIDATED DAMAGES:** Without prejudice to any other right or remedy available under the Contract, the Parties agree that if the Contractor breaches the Contract, including a Delay in performance of the Contractor's obligations under the Contract, it will be impractical or difficult to quantify the damages suffered by the ILO. The Parties, therefore, agree that in the event of such a breach by the Contractor, the Contractor will pay to the ILO, as liquidated damages, a sum equal to three-tenths of one (0.3) per cent of the Contract price for each day of delay until actual delivery or performance, up to a maximum of ten (10) per cent of the Contract price. Each Party acknowledges and agrees that the liquidated damages amount specified herein are intended to reasonably compensate the ILO and not intended to punish the Contractor. Without prejudice to any other right or remedy available under the Contract, the ILO reserves the right to recover such liquidated damages by deduction or otherwise, against future amounts owed by the ILO to the Contractor.

## **10. TERMINATION**

**10.1. TERMINATION BY THE ILO:**

10.1.1. Without prejudice to any other right or remedy available under the Contract and without the authorisation of a court or any other authorisation, the ILO may terminate the Contract immediately by written notice in the event that the Contractor:

10.1.1.1. is found to have made any material or fraudulent misrepresentation in the making of or performance of the Contract regardless of when the misrepresentation is discovered;

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

10.1.1.3. fails to perform contractual obligations or to satisfy any guarantees or warranties it has made under the Contract and does not rectify such failure within sixty (60) days following receipt of a written notice by the ILO;

10.1.1.4. is declared undesirable by the government where the Contractor is to perform any of its obligations under the Contract;

10.1.1.5. is the subject of any sanction or temporary suspension imposed by any organization within the United Nations System including the World Bank; or

10.1.1.6. the ILO's activities are curtailed or terminated.

10.1.2. Upon receipt of notice of termination by the ILO, the Contractor will take immediate steps to bring any Services to a close in a prompt and orderly manner, will reduce expenses to a minimum and will not undertake any further obligations from the date of receipt of notice of termination.

10.1.3. If the Contract should be terminated by the ILO, the ILO will make all payments which may be due up to the effective date of termination for any Services satisfactorily delivered or performed and accepted by the ILO.

**10.2. TERMINATION BY THE CONTRACTOR:**





10.2.1. Without prejudice to any other right or remedy available under the Contract and without the authorisation of a court or any other authorisation, the Contractor may terminate the Contract immediately by written notice in the event that the ILO:

10.2.1.1. fails to make payments which are due under the Contract and the ILO does not rectify such failure within a period of sixty (60) days after receipt of the Contractor's written notice of default; or

10.2.1.2. fails in its contractual obligations so as to make it unreasonable for the Contractor to proceed with the performance of its obligations under the Contract and the ILO does not rectify such failure within a period of sixty (60) days after receipt of the Contractor's written notice of default.

## 11. WARRANTY

### 11.1. WARRANTY OF SERVICES:

11.1.1. The Contractor warrants that any Services provided in accordance with the Contract will meet the specifications, timeframes and related requirements set forth in the Contract. All materials and workmanship utilized in performing the Services under the Contract will be of the respective kind(s) described in the Contract and free from defects. Materials not conforming to the specifications in the Contract will not be used in performance of the Services without prior written approval of the ILO.

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

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

## 12. MISCELLANEOUS

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

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

12.3. **NON-WAIVER OF RIGHTS:** Termination of the Contract in whole or in part by a Party or the failure by either Party to exercise any rights available to it, will not affect the accrued rights or claims and liabilities of either Party to the Contract.

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

12.5. **LIMITATION ON ACTIONS:** Irrespective of their nature, any dispute, controversy, or claim arising out of the Contract or the breach, termination, or invalidity thereof (other than obligations enumerated in paragraph 12.4) must be asserted within six (6) months after the termination or expiration of the Contract.

## 13. SETTLEMENT OF DISPUTES

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

13.2. **ARBITRATION:** Unless settled amicably under paragraph 13.1, within sixty (60) days, after receipt by one Party of the other Party's written request, any dispute, controversy or claim arising out of the Contract, or the breach, termination or



invalidity thereof, will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules then prevailing. In addition:

- 13.2.1. the place of arbitration will be Geneva;
- 13.2.2. the decisions of the arbitral tribunal will be based on general principles of international commercial law;
- 13.2.3. the arbitral tribunal will have no authority to award punitive damages; and
- 13.2.4. the Parties will be bound by any arbitration award rendered as a result of such arbitration as the final adjudication of any such dispute, controversy, or claim arising out of the Contract, or the breach, termination or invalidity thereof.

13.3. **LANGUAGE:** The conciliation and the arbitration proceedings will be conducted in the language in which the Contract is signed provided that it is one of the three working languages of the ILO (English, French and Spanish). In the event the Contract is in a language other than English, French or Spanish, the conciliation or the arbitration proceedings will be conducted in English, French or Spanish.

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<sup>1</sup> United Nations Security Council Resolution 1617 (2005) defines “associated with” and it is available at: <http://www.un.org/en/sc/documents/resolutions/2005.shtml>

<sup>2</sup> The 1267 Consolidated List is available at: <https://www.un.org/sc/suborg/en/sanctions/un-sc-consolidated-list>