

## ANNEX B - PAHO General Terms and Conditions

**1. LEGAL STATUS OF THE PARTIES/RESPONSIBILITY FOR EMPLOYEES:** The Contractor shall be considered as having the legal status of an independent contractor to PAHO. The Contractor's personnel and sub-contractors shall not be considered in any respect to be the employees or agents of PAHO and shall have no right or authority, express or implied, to commit or otherwise obligate PAHO to a third party in any way. The Contractor shall be responsible for the professional and technical competence of the personnel it assigns to perform services under the Contract and will select reliable and competent individuals who will be able to effectively perform the obligations under the Contract and who, while doing so, will respect the local laws and customs and conform to a high standard of moral and ethical conduct.

**2. STANDARD OF PERFORMANCE:** The Contractor agrees that the goods and/or services provided under this Contract shall conform to the highest professional standards. The Contractor shall conform to all applicable laws, regulations and ordinances promulgated by the government of the country in which the goods or services are provided. Further, the Contractor agrees to utilize any information and/or documents obtained from or provided by PAHO for the purpose of the Contract exclusively for the activities agreed upon between PAHO and the Contractor.

**3. ASSIGNMENT:** The Contractor shall not assign, transfer, pledge or make other disposition of this Contract, or any part thereof, or of any of the Contractor's rights or obligations hereunder, without the prior written authorization of PAHO. In addition, the assignee or transferee must agree in writing to be bound by all terms and conditions of this Contract.

**4. SUBCONTRACTING:** The Contractor shall first obtain the written approval of PAHO before subcontracting to a third party any of the Contractor's responsibilities under this Contract. PAHO's approval shall not relieve the Contractor of any of its obligations under this Contract. The terms of any sub-contract shall be subject to and conform to the provisions of this Contract.

**5. PURCHASE OF GOODS:** If the Contract involves, in whole or in part, the purchase of goods, the following conditions shall apply unless specifically stated otherwise in the Contract:

**5.1. PACKAGING OF THE GOODS:** The Contractor shall package the goods for delivery in accordance with the highest standards of packaging for the type and quantities and modes of transport of the goods. The goods shall be packed and marked in a proper manner in accordance with the shipping instructions attached to the Contract or, otherwise, as customarily done in the trade, and in accordance with any requirements imposed by applicable law, including regulations for the transportation of hazardous materials, or by the transporters and manufacturers of the goods as per International Standards

**5.2. EXPORT LICENSING:** The Contractor shall be responsible for obtaining any export licenses required with respect to the goods, products, or technologies, including software that is sold, delivered, licensed or otherwise provided to PAHO or its designee under the Contract. The Contractor shall procure any such license in an expeditious manner.

**5.3. TRANSPORTATION AND FREIGHT:** Unless otherwise specified in the Contract, the Contractor shall be solely liable for making all transport arrangements and for payment of freight and insurance costs for the shipment and delivery of the goods in accordance with the requirements of the Contract. The Contractor shall ensure that PAHO or its designee receives all necessary transport documents in a timely manner so as to enable PAHO or its designee to take delivery of the goods in accordance with the requirements of the Contract.

## PAHO General Terms and Conditions

**5.4. DELIVERY OF GOODS:** The Contractor shall hand over or make available the goods, and PAHO or its designee shall receive the goods, at the place and time designated under the Contract for their delivery. The Contractor shall provide to PAHO or its designee such shipment documentation (including, without limitation, bills of lading, airway bills, and commercial invoices) as are specified in the Contract or, otherwise, as are customarily utilized in the trade. All manuals, instructions, displays and any other information relevant to the goods shall be in the English language unless otherwise specified herein. The entire risk of loss, damage to, or destruction of the goods shall be borne exclusively by the Contractor until physical delivery of the goods to PAHO or its designee in accordance with the terms of the Contract. Delivery of the goods shall not be deemed in itself as constituting acceptance of the goods by PAHO.

**5.5. INSPECTION OF GOODS:** If the Contract provides that the goods may be inspected prior to delivery, the Contractor shall notify PAHO or its designee when the goods are ready for pre-delivery inspection. Notwithstanding any pre-delivery inspection, PAHO or its designated inspection agents may also inspect the goods upon delivery in order to confirm that the goods conform to applicable specifications or other requirements of the Contract.

**5.6. ACCEPTANCE OF GOODS:** Under no circumstances shall PAHO or its designee be required to accept any goods that do not conform to the specifications or requirements of the Contract. PAHO or its designee may condition its acceptance of the goods upon the successful completion of acceptance tests as may be specified in the Contract or otherwise agreed in writing by the Parties. In no case shall PAHO or its designee be obligated to accept any goods unless and until PAHO or its designee has had a reasonable opportunity to inspect the goods following delivery. If the Contract specifies that PAHO or its designee shall provide a written acceptance of the goods, the goods shall not be deemed accepted unless and until PAHO or its designee in fact provides such written acceptance. In no case shall payment by PAHO, in and of itself, constitute acceptance of the goods.

**5.7. REJECTION OF GOODS:** Notwithstanding any other rights or remedies available to PAHO under the Contract, if any of the goods are defective or otherwise do not conform to the specifications or other requirements of the Contract, PAHO or its designee, at their sole option, may reject or refuse to accept the goods. Within thirty (30) days following receipt of notice from PAHO of such rejection or refusal to accept the goods, the Contractor shall, at PAHO's sole discretion and at no additional expense to PAHO, either:

**5.7.1.** provide a full refund upon return of the goods, or a partial refund upon a return of a portion of the goods, by PAHO or its designee;

**5.7.2.** repair the goods in a manner that would enable the goods to conform to the specifications or other requirements of the Contract; or

**5.7.3.** replace the goods with goods that meet the specifications of the Contract.

**5.8.** In the event that PAHO or its designee elects to return any of the goods for the reasons specified in this Article, PAHO may procure the goods from another source. In addition to any other rights or remedies available to PAHO under the Contract, including, but not limited to, the right to terminate the Contract, the Contractor shall be liable for any additional cost beyond the balance of the Contract price resulting from any such procurement, including, inter alia, the costs of engaging in such procurement. Likewise, the Contractor shall pay all costs relating to the repair or return of the

## PAHO General Terms and Conditions

defective goods as well as the costs relating to the storage of any such defective goods and for the delivery of any replacement goods to PAHO or its designee.

**6. WARRANTIES:** In addition to and without limiting any other warranties, remedies or rights of PAHO stated in or arising under the Contract, the Contractor warrants and represents that:

**6.1.** The goods, including all packaging and packing thereof, and/or Services to be provided under the Contract conform to the specifications of the Contract, are fit for the purposes for which they are ordinarily used and for any purposes expressly made known in writing in the Contract, and shall be of even quality, free from faults and defects in design, material, manufacturer and workmanship;

**6.2.** If the Contractor is not the original manufacturer of the goods to be provided under the Contract, the Contractor shall provide PAHO or its designee with the benefit of all manufacturers' warranties in addition to any other warranties required to be provided under the Contract;

**6.3.** The goods and/or services are of the quality, quantity and description required by the Contract, including when subjected to conditions prevailing in the place of final destination;

**6.4.** The goods and/or services are free from any right of claim by any third-party, including claims of infringement of any intellectual property rights, including, but not limited to, patents, copyright and trade secrets;

**6.5.** All goods are new and unused;

**6.6.** All warranties will remain fully valid following any delivery of goods and/or services for a period of not less than one (1) year following acceptance of the goods and/or services by PAHO or its designee in accordance with the Contract;

**6.7.** During any period in which the Contractor's warranties are effective, upon notice by PAHO or its designee that the goods and/or services do not conform to the requirements of the Contract, the Contractor shall promptly and at its own expense:

**6.7.1.** correct the non-conformities,

**6.7.2.** replace defective goods with goods of the same or better quality, or

**6.7.3.** fully reimburse PAHO for the purchase price paid for the defective goods or services, and remove defective goods if applicable.

**6.7.4.** The Contractor shall remain responsive to the needs of PAHO or its designee for any services that may be required in connection with any of the Contractor's warranties under the Contract.

**7. TITLE:** The Contractor warrants and represents that the goods delivered under the Contract are unencumbered by any third party's title or other property rights, including, but not limited to, any liens or security interests. Unless otherwise expressly provided in the Contract, title in and to the goods shall pass from the Contractor to PAHO or its designee upon delivery of the goods and their acceptance by PAHO or its designee in accordance with the requirements of the Contract.

**8. INTELLECTUAL PROPERTY:** All rights, including title, copyright and patent rights in any material produced under the terms of this Contract shall be vested in PAHO or its designee, which shall be entitled to modify or change the materials

## PAHO General Terms and Conditions

as it deems fit. The Contractor acknowledges and agrees that such materials constitute works made for hire for PAHO and that the use or supply to PAHO of the goods or services rendered under this Contract does not infringe any patent, copyright, design, trade name or trademark.

**9. INDEMNIFICATION:** The Contractor shall indemnify, defend and hold PAHO harmless from any actions or claims brought against PAHO pertaining to the alleged infringement of a patent, copyright, design, trade name, or trademark arising in connection with the goods or services provided hereunder. The Contractor shall also indemnify, hold and save harmless and defend at its own expense PAHO, its officers, agents, servants and employees from and against all suits, claims, demands and liability of any nature or kind, including costs and expenses arising out of acts or omissions of the Contractor or the Contractor's employees, servants or agents in the performance of this Contract.

**10. FAILURE TO PERFORM:** If the Contractor fails to deliver the goods or perform any of the services for any reason, including failure to obtain the necessary export licenses by the delivery date(s) specified in the Contract, PAHO may, after giving the Contractor reasonable notice to perform and without prejudice to any other rights or remedies under this Contract, exercise one or more of the following rights:

**10.1.** Procure all or part of the goods and/or services from other sources and hold the Contractor responsible for any excess cost occasioned thereby;

**10.2.** refuse to accept delivery of all or parts of the goods and/or services;

**10.3.** terminate the Contract.

**11. PAYMENT TIMING:** PAHO shall normally, unless otherwise specified in this Contract and subject to certification by the PAHO/WHO Project Officer of satisfactory completion of said services, make payment within thirty (30) days of receipt of (a) the Vendor's invoice and (b) copies of the customary shipping documents and other documents specified in the Contract, whichever (a) or (b) is later.

**12. LIQUIDATED DAMAGES:** Tick if NOT applicable

PAHO can claim liquidated damages from the Contractor and deduct 0.5% of the value of the Contract for each day of delay, up to a maximum of 10% of the value of the Contract, for late delivery of goods and/or services or for goods and/or services which do not meet the agreed specifications and are therefore rejected by PAHO or its designee. The payment or deduction of such liquidated damages shall not relieve the Contractor from any of its other obligations or liabilities under the Contract.

**13. INSURANCE:** Tick if NOT applicable

The Contractor shall provide and thereafter maintain insurance against all risks with respect to its property and any equipment used for the execution of this Contract. The Contractor shall provide and thereafter maintain all appropriate workmen's compensation insurance with respect to its employees to cover claims for personal injury or death in connection with this Contract. The Contractor shall also provide and thereafter maintain liability insurance in an adequate amount to cover third-party claims for death or bodily injury arising from or in connection with the provisions of service under this Contract and to cover the loss of or damage to property arising from or in connection with the provision of services under this Contract (including due to the operation of any vehicles, boats, airplanes or other

## PAHO General Terms and Conditions

equipment owned or leased by the Contractor or its agents, servants, employees or sub-contractors). Such insurance policy(ies) shall be made out in the joint names of PAHO and the Contractor, and shall include rights of subrogation. The Contractor shall provide PAHO with a copy of all policy(ies) upon request.

**14. CONFIDENTIALITY:** "Confidential Information" is any information concerning or relating to the property, business or affairs of PAHO that is furnished to the Contractor or available to the Contractor because of this Contract. The Contractor shall treat all documents, correspondence, decisions and orders concerning the Contract as confidential and restricted in nature and shall not divulge or allow access to them by any unauthorized person. The Contractor may not communicate at any time to any other person, Government or authority external to PAHO any information known to it by reason of its association with PAHO which has not been made public, without PAHO's written authorization. In addition, the Contractor shall not at any time use such information to private advantage. These obligations do not lapse upon termination of this Contract.

**15. PUBLICITY, ADVERTISING, AND USE OF THE PAHO NAME, EMBLEM, OR SEAL:** The Contractor shall not use the name, emblem or official seal of PAHO for any purpose other than as expressly authorized in writing by PAHO. The Contractor shall not advertise or otherwise make public that it is furnishing goods or services to PAHO without specific written permission from PAHO in each instance. The provisions of this paragraph shall survive completion of the Contract.

**16. MODIFICATION:** Neither party may change, modify or revise any aspect of this Contract unless the amendment is made in writing and signed by an authorized PAHO contracting officer and the Contractor.

**17. FORCE MAJEURE:** Notwithstanding Article 10, neither party shall be held responsible for delay, impossibility, or impracticability in fulfilling the terms of the Contract due to force majeure, which includes but is not limited to: war, riot, civil disorder, earthquake, fire, explosion, flood or other adverse weather conditions, strikes, confiscation or any other factors beyond its control, including but not limited to extraordinary measures taken by a government that adversely affect routine commercial transactions. The failure of the Contractor or PAHO to fulfill any of their obligations hereunder shall not be considered a breach of, or default under this Contract, insofar as such liability arises from an event of force majeure, provided that the affected party notifies the other and takes all reasonable precautions, due care and reasonable alternative measures, all with the objective of carrying out the terms and conditions of this Contract.

**18. TERMINATION:** This Contract may be terminated by PAHO upon written notice delivered to the Contractor at least fifteen (15) days prior to the effective date of termination. In the case of goods being manufactured or packaged to PAHO specifications, the contract may be terminated with at least 45 days written notice from the effective date of termination. In the event of termination, PAHO will compensate the Contractor for goods accepted by PAHO or services provided to PAHO and deemed by PAHO to be satisfactory.

**19. SETTLEMENT OF DISPUTES:** PAHO and the Contractor shall use their best efforts to settle amicably any dispute, controversy or claim arising out of, or relating to this Contract. Unless any such dispute, controversy or claim between the parties arising out of or relating to this Contract or the breach, termination or invalidity thereof is settled amicably within sixty (60) days after receipt by one Party of the other party's request for such amicable settlement, such dispute, controversy or claim shall be referred by either Party to arbitration in accordance with the UNCITRAL Arbitration Rules then in effect. The arbitral tribunal shall have no authority to award punitive damages. Any arbitration award rendered

## PAHO General Terms and Conditions

as a result of such arbitration shall be considered to be the final adjudication of any such controversy, claim or dispute and shall bind the parties.

**20. PRIVILEGES AND IMMUNITIES:** Nothing contained in this Contract shall be deemed a waiver, express or implied, of any immunity from suit, judicial process, confiscation, taxation, or any other immunity or privilege which PAHO may enjoy, whether pursuant to treaty, convention, law, order or decree of an international or national character or otherwise, or in accordance with international customary law.

**21. TAX EXEMPTION:** PAHO is exempt from payments of sales, use and excise taxes, and is exempt from customs duties and charges of a similar nature in respect of articles imported or exported for official use. PAHO may deduct from an invoice any such tax, duties or charges to which it may be entitled by reason of its privileges and immunities.

**22. ANTI-TERRORISM:** The Contractor certifies that it is not an individual or entity appearing on the New Consolidated List established and maintained by the United Nations Security Council's 1267 Committee. Contractor shall use best efforts to ensure that no funds provided under this Contract will be used to benefit, directly or indirectly, individuals or entities associated with terrorism.

**23. PAHO OFFICIAL NOT TO BENEFIT:** The Contractor warrants that no PAHO staff shall be permitted to any share or part of the Contract or any benefit that may otherwise arise therefrom. PAHO officials may not accept any type of gift or any offer of hospitality beyond that of nominal value. PAHO expects its Contractors not to offer any benefit such as free goods or services or a work position or sales opportunity to any current or former PAHO staff member in order to facilitate the supplier's business relationship with PAHO.

**24. SELF-DEALING:** The Contractor may not bid to supply goods or services to PAHO that may be directly or indirectly related to the goods or services provided under this Contract.

**25. SEVERABILITY:** Any provision of this Contract prohibited by the laws of any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition, without invalidating the remaining provisions of this Contract.