

# **Long Term Agreement to provide Digital Printing Services to UNAIDS**

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*Request for Proposal (RFP)*  
*Reference Number: RFP-2010-31*

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## 1. INTRODUCTION

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### 1.1 Objective of the RFP

The purpose of this Request for Proposal (RFP) is to establish a Long Term Agreement (LTA) with a contractor for the digital printing of certain UNAIDS publications with print runs from 50 to 1,000 units.

The LTA will be established for a period of three years following its signature.

The publications that could be requested to be produced are all of those UNAIDS publications which fall within the following criteria: Flyers, Depliant and Brochures. Sizes A4, A5, 21x21cm or 19-25.5cm Covers + text printed in 4 colour process (CMYK) recto verso.

Vendors are requested to propose the best and most cost-effective solution to meet UNAIDS requirements, while ensuring a high level of service. For more information about UNAIDS please consult our website [www.unaids.org](http://www.unaids.org).

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### 1.2 Characteristics of the bidder

#### 1.2.1 Status

- The provider shall be a public institution, company, or NGO operating in the field of production of printed publications, with proven expertise in managing electronic documents for production.

#### 1.2.2 Accreditations

- An accreditation (like ISO 14001 and/or Imprim'vert and/or FSC) or an on-going accreditation process by a certified accreditation body will be an asset.

#### 1.2.3 Previous experience

- Proven capacity for printing the type of publications required.

#### 1.2.4 Logistic capacity

Due to the nature of the publications it is required:

- The materials are produced and shipped to UNAIDS HQ in Geneva in very short time.
- Capacity to print in the proximities of Geneva with very short notice;

#### 1.2.5 Staffing

- None specific

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### 1.3 Work to be performed

#### 1.3.1 Key requirements

It is requested from the bidder to produce publications with the following characteristics:

- Flyers – Paper 135gr, Quadri Recto Verso printing
  - Format A4
  - Format A5
  - Format 21x21 cm.

“Depliant” – Paper 135gr, Quadri Recto Verso printing  
Format A3 open and A4 closed  
Format A4 open and A5 closed  
Format 42x21cm open 21x21 cm. closed

Brochures – Cover 200-250gr, Interior 90-115gr. Quadri Recto Verso printing,  
Saddle stitched binding up to 40 pages plus cover, portrait/upright,  
binding on the long edge  
Format A4 open/A5 closed  
Format A3 open/A4 closed  
Format 38x19cm open/19x25,5cm closed

UNAIDS will require that these publications are printed on one of two preferred materials:

- **Satimat Green or the same specifications (Arjowiggins and Antalis, also marketed as Oxygen Silk in some markets). This is a high quality satin-coated chlorine-free, wood-free paper manufactured from 60% recycled fibres and 40% FSC approved virgin fibres. Certified for use with the FSC Mixed Sources logo.**
- **Lenza Green or the same specifications also marketed as Inapa Oxygen offset in some markets. This is a high-white, uncoated wood-free offset paper manufactured from 100% recycled fibres. Certified for use with the FSC Recycled logo.**

Bidders should bid using Satimat Green and Lenza Green, or equivalent sheets with equal or better specifications, to be approved by UNAIDS prior to awarding bid. In all cases you are to **provide paper samples and the manufacturer's full technical description of the paper**, and these should be sent in your Technical Proposal envelope, or by separate courier if you are submitting an electronic bid. The paper should meet or exceed FSC, ISO and EPA guidelines for recycled paper.

On the basis of the Bids received it is expected that UNAIDS will select one or two printers (three at the most) to produce all of their publications which fall in to this category for three years after signature of the agreement(s).

Suggested production schedules for the publications within this category are,

- From receipt of our printing files to submission of your electronic or hard copy proofs, 1 day
- From receipt of our corrections, changes or modifications to the electronic or hard copy proofs to submission of your revised electronic or hard copy proofs, 1 day.
- From receipt of our “Approval to Print” to your completion of order, printing and binding and up to “ready for dispatch”, 2 days.
- You are to state a typical shipping time in days, and state whether by truck from the moment when the goods are “ready for dispatch” to the time of arrival in our storage facility. The shipping time stated must reflect the means of transport included in to the production costs. The length of shipping time will be taken into account in the Technical Proposal; shorter shipping times will be favoured.
- Provision of electronic copies of the publication in its final form, provided in two versions, 1) a low resolution PDF for web use, where all of the pages, including covers are assembled in the exact sequence that the book would be read. 2) A high resolution PDF containing trim marks, bleeds, register marks etc, in other words ready for use by another printer. Within 1 week of our “Approval to Print”

Proposals should include your own production schedules, taking into account the above suggestions, and add in any other relevant information.

UNAIDS' current work methodology for this type of publications is described below:

- Pre-press receipt of printing files from UNAIDS in the form of InDesign CS3 files on a PC platform, or high-resolution printer-ready PDF files. Files will be submitted to you either by e-mail attachment or uploaded to a dedicated FTP site for you to download.
- Preparation and submission of hard copy proofs and/or contract quality electronic proofs
- Receipt of our corrections, changes or modifications to the hard copy proofs and/or contract quality electronic proofs and after you have attended to these requests, submission of revised hard copy proofs and/or contract quality electronic proofs
- Receipt of our "Approval to Print" either by return of signed hard copy or by e-mail with the digital proofs returned to you.
- Printing to the specifications outlined in our confirmation of order, which will in any case be based on the broad outlines contained in these Terms of Reference
- Project management of the complete operation whilst it is in production in your factory.
- Organizing despatch and overseeing the process to the UNAIDS storage facility in Geneva until the goods are signed for. A copy of the signed delivery note (electronic or paper) will be sent to UNAIDS within 24 hours.
- Provision of electronic copies of the publication in its final form, via e-mail, CD-ROM or uploaded onto a dedicated FTP site and in two versions, 1) a low resolution PDF for web use, where all of the pages, including covers are assembled in the exact sequence that the book would be read. 2) A high resolution PDF containing trim marks, bleeds, register marks etc, in other words ready for use by another printer.

Your Technical Proposal should indicate your capabilities in each area, and indicate whether you would perform the work yourself or outsource it. If you feel you have particular strengths in any of these or other areas relevant to production of these publications please draw our attention to them in your Technical Proposal.

#### **Packaging and Labelling:**

The books or other publications are to be packed into strong corrugated cartons, no more than 10 kilos per carton. Each carton must be labeled, with the title of the book, the UNAIDS job code number, the number of copies per carton, and the name of the printer. You are to supply the labels and you must use a red label for the English edition, a blue label for the French edition, green for the Spanish edition, grey for the Russian edition, yellow for the Chinese edition, brown for the Arabic edition and pink for the Portuguese edition. The cartons are to be placed securely on strong non-returnable EUR standard wooden pallets 80 x 120 cms. Each pallet must be labeled with the title of the book, our job code number, the number of copies per pallet, and the name of the printer.

#### **1.3.2 Reporting requirements**

Each order placed by UNAIDS will be detailed separately and would need to be invoiced separately. No specific reporting is required other than for each order all details of the actual production would need to be provided in terms of specifications and number of unit produced.

### **1.3.3 Finance and accounting requirements**

Each order placed separately to be invoiced separately. UNAIDS will pay for each order independently.

Every six months of the duration of the contract, the bidder will need to report on the cumulative value of the orders since the beginning of the agreement.

### **1.3.4 Performance monitoring**

Before signing of the contract the final production schedules and timings would be agreed and each order will be measured against this schedule. In case of non-compliance a note will be made and included in the performance at the end of the contract.

### **1.3.5 Further Capacities**

No additional capacities required.

## 2. INSTRUCTIONS TO BIDDERS

Bidders should follow the instructions set forth below in the submission of their proposal to UNAIDS.

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### 2.1 Language of the Proposal and other Documents

The proposal prepared by the bidder, and all correspondence and documents relating to the proposal exchanged between the bidder and UNAIDS shall be written in the English language.

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### 2.2 Intention to Bid

No later than **07-Jan-2011**, the bidder shall complete and return by email to UNAIDS:

1. The enclosed RFP\_Acknowledgement.doc form signed as confirmation of the bidder's intention to submit a *bona fide* proposal and designate its representative to whom communications may be directed, including any addenda; and
2. The enclosed RFP\_Confidentiality.doc form signed.
  - Email for submissions of acknowledgement: [bids@unaids.org](mailto:bids@unaids.org)
  - Subject for email: **Intention to bid RFP-2010-31**

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### 2.3 Cost of Proposal

The bidder shall bear all costs associated with the preparation and submission of the proposal up to the final award of the contract. UNAIDS will in no case be responsible or liable for those costs, regardless of the conduct or outcome of the procurement process.

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### 2.4 Contents of the Proposal

Proposals must offer services for the total requirement. Proposals offering only part of the requirement may be rejected.

The bidder is expected to examine all corresponding instructions, forms, terms and specifications contained in this RFP.

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### 2.5 Joint Proposal

Two or more companies may form a consortium and submit a joint proposal if this helps in finding a team capable of undertaking all elements of the anticipated work. Such a proposal must be submitted under the name of one member of the consortium - hereinafter "lead organization". The lead organization will be responsible for undertaking all negotiations and discussions with the UNAIDS and performing the contract.



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## 2.6 Communications during the RFP Period

A prospective bidder requiring any clarification on technical, contractual or commercial matters may notify UNAIDS via email at the following address:

Email for submissions of all queries: [Bids@UNAIDS.org](mailto:Bids@UNAIDS.org)

Subject: **Inquiry RFP-2010-31**

UNAIDS will respond in writing (via email only) to any request for clarification of the RFP that it receives prior to **13-Jan-2011**.

A consolidated document of UNAIDS's response to all questions (including an explanation of the query but without identifying the source of enquiry) will be made available to all prospective bidders on the UNAIDS website, Request for Proposals section. Questions are to be submitted in the format "Paragraph Number - Question."

There shall be no individual presentation by or meeting with bidders until after the closing date. There should be no contact with UNAIDS officials concerning the RFP process, from the date of issue of this RFP to the final selection, other than with the UNAIDS Project Manager and/or Officials designated by the Project Manager.

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## 2.7 Proposal structure

### 2.7.1 Proposal Submission Form

The bidder's proposal must be accompanied by a Proposal Submission Form, in the form attached hereto as Annex 1, signed by a duly authorized representative of the bidder, stating:

- That the proposal meets the requirements of the RFP,
- That the bidder undertakes, on its own behalf and on behalf of its possible partners and contractors, to provide the goods/services in accordance with the terms of the Request for Proposal (RFP), and its accompanying documents, for the amount set forth in the attached Financial Proposal,
- The number of days the proposal is valid (from the date of closing of the RFP).

### 2.7.2 Information of Firm/Organization submitting Proposal

The following information must be provided in order to ascertain capabilities to deliver the work proposed.

Information of Firm/Organization submitting Proposal	
<b>1</b>	<b>Company Information</b>
<b>1.1</b>	<b>Corporate information</b>
<b>1.1.1</b>	<b>Quality Assurance / Quality Control mechanisms and certifications (including Quality and Environmental) in place at the company</b>
<b>1.1.2</b>	<b>Organization structure</b>
<b>1.1.3</b>	<b>Geographical presence</b>
<b>1.1.4</b>	<b>Length of time the company has been in business</b> supplying the type of services requested
<b>1.2</b>	<b>Staffing information, Geographical distribution and number of staff per location</b>
<b>1.3</b>	<b>Overall situation of the company</b> include audited <b>financial statements</b> for the past three (3) years
<b>1.4</b>	<b>Legal information</b>
<b>1.4.1</b>	History of <b>Bankruptcy</b>

Information of Firm/Organization submitting Proposal	
1.4.2	Pending major <b>lawsuits</b> and <b>litigations</b> in excess of USD 100,000 at risk (indicate particularly those by licensees or patent infringement)
1.4.3	Pending <b>Criminal/Civil lawsuits</b>
1.5	Proposed <b>sub-contractor</b> arrangements including <b>company information</b> (as above for each sub-contractor)
<b>2</b>	<b>Experiences and Reference Contact Information</b> (list and provide up to five (5) detailed examples of relevant publications recently printed in the past year.

### 2.7.3 Technical Proposal

The bidder should include in this section all relevant information for UNAIDS to evaluate the proposal, including information relating to coverage of UNAIDS needs and requirements, as specified in section 1, proposed timeline, resources dedicated partially or fully to the project. {Any specific format or breakdown of services required by UNAIDS beyond the categories listed below should also be specified in this section}

**IMPORTANT:** The Technical Proposal shall contain no price or cost information.

The Technical Proposal must include the following sections:

a) **Understanding of the Requirements for Services, including Assumptions**

Include any assumptions as well as comments on the services as indicated in the Technical Specifications, or as the bidder may otherwise believe to be necessary.

b) **Proposed Approach, Methodology, Timing and Outputs**

Any comments or suggestions on the technical specifications, as well as the bidder's detailed description of the manner in which it would respond to the technical specifications.

c) **Current printing equipment**

The details of the equipment and quantities to be used in printing UNAID publications during the life of the contract.

If binding or any other aspect is subcontracted, the details should be provided.

d) **Shipping times**

State the shipping time in days and state the means of transport proposed.

The shipping times stated here must reflect the means of transport in your stated shipping arrangements (truck, courier) and in your Financial Proposal.

State the name of the Company / Courier Company / Trucking Company you will be using

### 2.7.4 Samples

Included in the same envelope of the technical proposal or on a separate envelope, provide samples of the proposed paper and board whether or not you are using Satimat Green or Lenza Green (or equivalent), provide a copy of the paper and board manufacturer's technical description, fibre content etc.

Provide details of relevant features about your company that would differentiate it from its competitors.

### 2.7.5 Financial Proposal

The bidder's **separate sealed** price component must contain an overall quotation in a single currency, either in US Dollars or in the currency of the bidder's country of incorporation or registration. If the bidder opts for the latter and for evaluation purposes only, its proposal will be converted into US dollars using the United Nations rate of exchange in effect on the closing date for the submission of proposals.

It is **REQUIRED** the bidder submit the financial proposal using the template “**Price Schedule Form**” available in the UNAIDS website together with this RFP. The completed scheduled form should be signed.

**The electronic Price Schedule Form should be included in its original format in a CD-ROM within the financial envelope or in the electronic financial submission.**

The Financial Proposal shall be accompanied by a cover letter signed by a duly authorized representative of the bidder, confirming the following:

- (a) the prices as stated in the Price Schedule Form; and
- (b) the period of validity of the bid.

In addition, the Financial Proposal must cover all the goods or services to be provided and must itemize any cost not included in the Price Schedule form

A proposed schedule of payments which must be expressed and will be made in the currency of the proposal.

In preparing Financial Proposals, bidders should carefully note the following provisions regarding UNAIDS policies on limitations on advance payments, retention, performance bonds, etc.

UNAIDS' general policy is to pay for the performance of contractual services rendered or to effect payment upon the achievement of specific milestones described in the contract.

Please note that UNAIDS' policy is to make an advance payment up to a maximum of 25 per cent upon signature of a contract, whether a private firm, NGO or a government or other entity. UNAIDS, at its discretion, may however determine that such payment is not warranted or determine the conditions under which such payment would be made. In any case where an advance payment for \$50,000 or more is requested and subsequently approved, UNAIDS will normally require a bank guarantee or other suitable security arrangement. Further information may be requested by UNAIDS at the time of finalizing contract negotiations with the selected bidder.

Any request for an advance payment is to be justified and documented and must be submitted with the financial proposal. This justification shall explain the need for the advance payment, itemize the amount requested and provide a time-schedule for utilization of said amount. In addition, the bidder must submit documentation regarding its financial status, e.g. audited financial statements at 31 December of the previous year, and include this documentation with its financial proposal. Further information may be requested by UNAIDS at the time of finalizing contract negotiations with the selected bidder.

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## 2.8 Format and Signing of Proposals

The bidder shall submit the proposal in **one external envelope** marked clearly **Bid Ref RFP-2010-31 containing inside two sealed envelopes** by the closing date set forth in section 2.10 to the address specified below.

**UNAIDS**  
**Bid Opening Committee / AST**  
**Reference: RFP-2010-31**  
**20, Avenue Appia**  
**CH-1211 Geneva 27**  
**Switzerland**

**NOTE:** If the envelopes are not sealed and marked as per the instructions in this clause, UNAIDS will not assume responsibility for the proposal's misplacement or premature opening and may – at its discretion – reject the proposal.

This first internal sealed envelope must contain **Two** hard copies of the complete technical proposal. Each complete technical proposal should include the following:

- Hard copy of proposal (as specified in section 2.7.3) and supporting documents (marked clearly **Bid Ref RFP-2010-31**)
- Signed Proposal Submission Form (see Annex 1 to this RFP)
- One CD-ROM containing electronic copy of the technical proposal only and supporting documents

The second internal sealed envelope must contain the financial proposal and its cover letter as specified in section 2.7.54. **2** copies of the complete financial proposal must be included and a separate CD-ROM containing only the financial proposal must be included.

**NOTE 2:** If preferred, the proposal may instead be forwarded to two secure email accounts. The "Technical Proposal" shall be forwarded to [TechnicalBids@unaids.org](mailto:TechnicalBids@unaids.org) and the "Financial Proposal" forwarded separately to [FinancialBids@unaids.org](mailto:FinancialBids@unaids.org). There will be no automatic confirmation of receipt as the proposals are only opened after the closing date. The email subject must include the bid reference number available on the first page of this RFP and on the UNAIDS website.

Please also note the following instructions for preparation of the Proposal:

- 1) The two (2) copies shall be labeled "Master copy" and "Copy 1". The bidder must ensure that the content of all copies is identical. If at any time a difference is discovered between any copies of the proposal then the "Master copy" will prevail as the official copy.
- 2) The two (2) hard copies shall be unbound, provided in binders from which pages may be removed easily. Dividers may be used to separate sections of the document, if needed.
- 3) All pages of the proposal shall be numbered in the format 'Page X of Y'.
- 4) All copies of the proposal shall be typed or written in indelible ink and shall be signed by the bidder or a person or persons duly authorized to bind the bidder to the contract. A proposal shall contain no interlineations, erasures, or overwriting except, as necessary to correct errors made by the bidder, in which case such corrections shall be initialed by the person or persons signing the proposal.
- 5) The electronic copy of the proposal and supporting documents on a CD-ROM

should be in PDF, or MS Office compatible format (Word, Excel, Power Point or MS Project). The responses to the functional requirements should be submitted in the structure provided in this RFP. The financial proposal should be submitted in the file format supplied by UNAIDS and using the template distributed with the RFP and only within the sealed financial proposal in a separate CD from the technical proposal. The proposed timeline project plan should be either in MS Project MPP, XLS or PDF format.

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## 2.9 Period of Validity of Proposals

The offer outlined in the proposal must be valid for a minimum period of 90 calendar days after the closing date. A proposal valid for a shorter period may be rejected by UNAIDS. In exceptional circumstances, UNAIDS may solicit the bidder's consent to an extension of the period of validity. The request and the responses thereto shall be made in writing. Any bidder granting the request will not be required nor permitted to modify its proposal.

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## 2.10 Closing Date for Submission of Proposals

**Proposals must be received at UNAIDS at the address specified in section 2.8 no later than 21-Jan-2011 at 17:00 hrs Geneva time.**

UNAIDS may, at its own discretion, extend this closing date for the submission of proposals by notifying all bidders thereof in writing.

Any proposal received by UNAIDS after the closing date for submission of proposals might be rejected.

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## 2.11 Modification and Withdrawal of Proposals

The bidder may withdraw its proposal any time after the proposal's submission and before the opening date, provided that written signed notice of the withdrawal (by a duly authorized representative of the bidder) via email or fax is received by UNAIDS prior to the closing date.

The bidder's withdrawal notice shall be prepared and dispatched to be received before the closing date in accordance with section 2.10.

- Email for withdrawal of proposal: [Bids@UNAIDS.org](mailto:Bids@UNAIDS.org)

No proposal may be modified after the closing date for submission of proposals, unless UNAIDS has issued an amendment to the RFP allowing such modifications (see section 2.13).

No proposal may be withdrawn in the interval between the opening date and the expiration of the period of proposal validity specified by the bidder in the proposal.

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## 2.12 Receipt of Proposals from Non-invitees

UNAIDS may, at its own discretion, extend the RFP to bidders that were not included in the individual invitation list if this is necessary and in the interest of UNAIDS.

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## 2.13 Amendments of the RFP

At any time prior to the closing date for submission of proposals, UNAIDS may, for any reason, whether on its own initiative or in response to a clarification requested by a bidder, modify the RFP by amendment. Amendments could include modification of project scope or requirements, project timeline expectations or extension of the closing date for submission.

All prospective bidders that have received the RFP will be notified in writing of all amendments to the RFP. In addition, all amendments will be posted on the UNAIDS website in the Request for Proposals section and in any other website used by UNAIDS directly for publishing the Request for Proposals.

## 3. OPENING AND EVALUATION OF PROPOSALS

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### 3.1 Opening of Proposals

UNAIDS will open the technical proposals in the presence of a Committee formed by UNAIDS at the Headquarters office in Geneva, Switzerland on a date fixed after the closing of the tendering period. Each technical proposal will be opened during the session with each bidder announced. Financial proposals will be opened only after the technical evaluation of the proposals.

There will not be a public opening of bids.

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### 3.2 Clarification of Proposals

UNAIDS may, at its discretion, ask any bidder for clarification of any part of its proposal to assist in the examination, evaluation and comparison of proposals. The request for clarification and the response shall be in writing. No change in price or substance of the proposal shall be sought, offered or permitted during this exchange.

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### 3.3 Preliminary Examination of Proposals

UNAIDS will examine the proposals to determine whether: (i) they are complete, (ii) any computational errors have been made, (iii) the documents have been properly signed, and (iv) the proposals are generally in order.

**Please note that UNAIDS is not bound to select any of the firms/institutions submitting proposals.** Furthermore, since a contract would be awarded in respect of the proposal which is considered most responsive to the needs of the project concerned, due consideration being given to UNAIDS' general principles, including economy and efficiency, UNAIDS does not bind itself in any way to select the firm/institution offering the lowest price.

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### 3.4 Technical Evaluation of Proposals

A two-stage procedure will be utilized in evaluating the proposals, with technical evaluation of the proposal being completed prior to any evaluation of the Financial Proposal.

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The technical evaluation of proposals will be accomplished by a selection panel. The selection panel will evaluate all proposals which have passed the preliminary examination of proposals according to:

- the quality of the overall proposal **(10 Points)**;
- the appropriateness of the proposed schedule **(30 Points)**;
- the quality of the technical solution proposed **(40 Points)**;
- the experience of the firm in carrying out related projects **(20 Points)**;

The obtainable number of points specified for each evaluation criterion indicates the relative significance or weight of the item in the overall evaluation process.

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### 3.5 Financial Proposal Evaluation

The financial proposal will only be evaluated if the technical proposal achieves a minimum of 60% of the total allocable points for the technical evaluation.

Proposals failing to obtain this minimum threshold will not be eligible for further consideration.

All companies obtaining the minimum threshold would be considered with same score for financial evaluation.

The selection would be made on the lowest priced offers from the qualified bids

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### 3.6 Bidders' Presentations

At the discretion of UNAIDS, selected bidders may be invited to supply additional information on the contents of their proposal during the evaluation period. Such bidders could be asked to give a presentation of their proposal (possibly with an emphasis on a topic of UNAIDS's choice) followed by a question and answer session. If UNAIDS determines that there is such a need, the presentation will be held at UNAIDS Headquarters in Geneva, or by videoconference/Internet. Bidders will be given reasonable time to prepare for the presentation.

NOTE: Presentations or other individual contact is expressly prohibited before the closing date for proposal submission.

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## 4. AWARD OF CONTRACT

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### 4.1 Award Criteria, Award of Contract

UNAIDS reserves the right to accept or reject any proposal, and to annul the solicitation process and reject all proposals at any time prior to award of contract, without thereby incurring any liability to the affected bidder or any obligation to inform the affected bidder or bidders of the grounds for the UNAIDS' action.

Prior to expiration of the period of proposal validity, UNAIDS will award the contract to the qualified bidder(s) whose proposal, after being evaluated, is considered to be the most responsive to the needs of UNAIDS and activity concerned.

UNAIDS has the right to eliminate bids throughout the evaluation process. However, UNAIDS is under no obligation to state the reasons for elimination to the bidder.

NOTE: UNAIDS is **acting in good faith** by issuing this RFP. However, **this document does not obligate UNAIDS to contract for the supply of any products or services.**

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#### **4.2 UNAIDS's Right to modify Scope or Requirements during the Proposal Process**

UNAIDS reserves the right to, at any time during the proposal process, modify the scope of services and goods specified in the RFP. At any step in the evaluation process, UNAIDS reserves the right to issue an amendment to the RFP detailing the change to only those bidders that have not been officially eliminated due to technical reasons at that point in time. Official elimination is signified by a direct communication to that effect from UNAIDS.

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#### **4.3 UNAIDS's Right to Extend/Revise Scope or Requirements at Time of Award**

UNAIDS reserves the right, at the time of award of contract, to extend/revise the scope of services and goods specified in the RFP without any change in base price of services (e.g. day rate for resources) or other terms and conditions.

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#### **4.4 UNAIDS's Right to enter into Contract Price Negotiations**

UNAIDS reserves the right to enter into contract price negotiations with one or more bidders that have not been eliminated during the evaluation process.

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#### **4.5 Signing of the Contract**

Within 30 days of receipt of the contract the successful bidder shall sign and date the contract and return it to UNAIDS according to the instructions provided at that time. If the bidder does not accept the contract terms without changes, then UNAIDS has the right not to proceed with the selected bidder and instead contract with another bidder of its choice.



## 5. GENERAL AND CONTRACTUAL CONDITIONS

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

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

Services under this Contract will be supplied on a fixed-price basis in a UN convertible currency (preferably US Dollars), based on the UN exchange rate of the date of invoice.

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### 5.1 Responsibility

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

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### 5.2 Source of Instructions

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

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### 5.3 Warranties

The Contractor will warrant and represent to UNAIDS as follows:

- 1) The deliverables shall meet the specifications and shall function in a manner which is fully adequate to meet its intended purpose. The Contractor furthermore warrants that the deliverables shall be error-free, in that the Contractor shall correct any errors in the deliverables, free of charge, within fifteen days after their notification to the Contractor, during a period of at least six months after completion of the work. It is agreed, however, that errors and other defects, which have been caused by modifications to the deliverables made by UNAIDS without agreement of the Contractor are not covered by this paragraph.
- 2) The deliverables shall, to the extent it is not original, only be derived from, or incorporate, material over which the Contractor has the full legal right and authority to use it for the proper implementation of this Contract. The Contractor shall obtain all the necessary licenses for all non-original material incorporated in the deliverables including, but not limited to, licenses for UNAIDS to use any underlying software, application, and operating deliverables included in the deliverables or on which it is based, so as to permit UNAIDS to fully exercise its rights in the deliverables and the software without any obligation on UNAIDS's part to make any additional payments

whatsoever to any party.

- 3) The deliverables shall not violate any copyright, patent right, or other proprietary right of any third party and be delivered to UNAIDS free and clear of any and all liens, claims, charges, security interest and any other encumbrances of any nature whatsoever.
- 4) The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on the copyright of any document or other material (whether machine readable or not) to which the Contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract.
- 5) Except as otherwise explicitly provided in this Contract, the Contractor shall at all times provide all the necessary on-site and off-site resources to meet its obligations hereunder. The Contractor shall only use highly qualified staff, acceptable to UNAIDS, to perform its obligations hereunder.
- 6) The Contractor shall take full and sole responsibility for the payment of all wages, benefits and monies due to all persons and entities used by it in connection with the implementation and execution of the Contract, including, but not limited to, the Contractor's employees, permitted subcontractors and suppliers.

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## 5.4 Legal Status

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

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

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

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

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## 5.5 Relation Between the Parties

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

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## **5.6 Waiver of Breach**

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

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## **5.7 Liability**

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

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## **5.8 Assignment**

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

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## **5.9 Officials not to Benefit**

The Contractor warrants that no official of UNAIDS has received or will be offered by the Contractor any direct or indirect benefit arising from this Contract or the award thereof. The Contractor agrees that breach of this provision is a breach of an essential term of this Contract. The Contractor also warrants that it is not and will not be involved in, or associated with, any entity involved in terrorism.

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## **5.10 Indemnification**

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

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

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

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## **5.12 Subcontracting**

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

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## **5.13 Place of Performance**

The contract would be executed on the bidder's premises

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## **5.14 Language**

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

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## **5.15 Confidentiality**

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

The Contractor, its employees and any other persons and entities used by the Contractor shall furthermore not copy and/or otherwise infringe on copyright of any document (whether machine-readable or not) to which the Contractor, its employees and any other persons and entities used by the Contractor have access in the performance of this Contract. (These obligations shall not lapse upon termination of the contract).

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

All maps, drawings, photographs, mosaics, plans, reports, recommendations, estimates, documents and all other data compiled by or received by the Contractor under this Contract shall be the property of UNAIDS, shall be treated as confidential and shall be delivered only to UNAIDS authorized officials prior to completion of work under this Contract.

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

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## 5.17 Title Rights

This is a work made for hire. UNAIDS shall be the owner of all intellectual property rights, including but not limited to patents, copyrights and trademarks, with regard to all deliverables and other material which bears a direct relation to, or is made in consequence of, the services provided to UNAIDS by the Contractor.

UNAIDS reserves the right to revise the work, to use the work in a different way from that originally envisaged or to not use the work at all.

At UNAIDS's request, the Contractor shall take all necessary steps, execute all necessary documents and generally assist UNAIDS in securing such proprietary rights and transferring them to UNAIDS in compliance with the requirements of applicable law.

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## 5.18 Cancellation

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

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

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## 5.19 Force Majeure

No party to the Contract shall be responsible for a delay caused by force majeure, that is, a delay caused by strike, lock-out, foreign or civil war, or any other event outside his control, it being agreed, however, that UNAIDS shall be entitled to terminate the Contract (or any part of the Contract) forthwith if the implementation of the work is delayed or prevented by any such reason for an aggregate of thirty (30) days. Such termination shall be subject to payment of an equitable part of the Contract sum and/or other reasonable charges. In the event of such termination, the Contractor shall, in accordance with the ownership rights referred to in section 5.17 *Title rights*, deliver to UNAIDS all work products and other materials so far produced.

- a) Force majeure, as used in this Article, means acts of God, war (whether declared or not), invasion, revolution, insurrection, or other acts of a similar nature or force which are beyond the control of the Parties.
- b) In the event of and as soon as possible after the occurrence of any cause constituting force majeure, the Contractor shall give notice and full particulars in writing to UNAIDS, of such occurrence or change if the Contractor is thereby

rendered unable, wholly or in part, to perform its obligations and meet its responsibilities under this Contract. The Contractor shall also notify UNAIDS of any other changes in conditions or the occurrence of any event which interferes or threatens to interfere with its performance of this Contract. The notice shall include steps proposed by the Contractor to be taken including any reasonable alternative means for performance that is not prevented by force majeure. On receipt of the notice required under this Article, UNAIDS shall take such action as, in its sole discretion, it considers to be appropriate or necessary in the circumstances, including the granting to the Contractor of a reasonable extension of time in which to perform its obligations under this Contract.

- c) If the Contractor is rendered permanently unable, wholly, or in part, by reason of force majeure to perform its obligations and meet its responsibilities under this Contract, UNAIDS shall have the right to suspend or terminate this Contract on the same terms and conditions as are provided for in section 5.18 *Cancellation*, except that the period of notice shall be seven (7) days instead of thirty (30) days.

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## **5.20 Use of UNAIDS and WHO name and emblem**

Without UNAIDS's prior written approval, the Contractor shall not, in any statement of an advertising or promotional nature, refer to the Contract or its relationship with UNAIDS and/or the World Health Organization (WHO) (which provides the administration of UNAIDS, including its secretariat). In no case shall the Contractor use the name or the emblem of UNAIDS and/or WHO, or any abbreviation thereof, in relation to its business or otherwise.

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## **5.21 Successors and Assignees**

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

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## **5.22 Payment**

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

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## **5.23 Title to Equipment**

Title to any equipment and supplies that may be furnished by UNAIDS shall rest with UNAIDS and any such equipment shall be returned to UNAIDS at the conclusion of this Contract or when no longer needed by the Contractor. Such equipment, when returned to UNAIDS, shall be in the same condition as when delivered to the Contractor, subject to normal wear and tear. The Contractor shall be liable to compensate UNAIDS for equipment determined to be damaged or degraded beyond normal wear and tear.

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

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

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

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

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

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

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## **5.25 Settlement of Disputes**

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

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## **5.26 Observance of the Law**

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

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## **5.27 Authority to Modify**

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



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## **5.28 Privileges and Immunities**

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

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## **5.29 Personnel**

### **5.29.1 Approval of Contractor Personnel**

UNAIDS reserves the right to approve any employee, subcontractor or agent furnished by the Contractor. All of the Contractor's employees, subcontractors or agents performing work under this Agreement must have appropriate levels of experience and be adequately trained to perform the services. UNAIDS reserves the right to undertake an interview process as part of the approval of Contractor personnel.

The Contractor acknowledges that the skill and experience of the Contractor's personnel proposed to be assigned to the project are material elements in UNAIDS's engaging the Contractor for the project. Therefore, in order to ensure timely and cohesive completion of the project, both parties intend that personnel initially assigned to the project continue through to project completion. Once an individual has been approved and assigned to the project, such individual will not thereafter be taken off the project by the Contractor, or reassigned by the Contractor to other duties involving comparable employment by the Contractor while the project is in progress and for so long as there has been no suspension. Circumstances may arise, however, which necessitate that personnel be substituted during the progress of work due to delays or due to promotions, termination, sickness, vacation or other similar material change in the employment circumstance of the employee, at which time a replacement of comparable background and experience may be substituted, subject to approval of UNAIDS.

UNAIDS may refuse access to or require replacement of any employee, subcontractor or agent of the Contractor if such individual renders, in the sole judgment of UNAIDS, inadequate or unacceptable performance, or if for any other reason UNAIDS finds such individual does not meet its security or responsibility requirements. The Contractor shall replace such an individual within fifteen (15) business days of receipt of written notice. The replacement will be comparable in skills required and will be billed at a rate that is equal to or less than the rate of the individual being replaced.

### **5.29.2 Project Managers**

Each party shall appoint a qualified project manager ("Project Manager") who shall serve as such party's primary liaison throughout the course of the project including the Services. The Project Manager shall be authorized by the respective party to answer all questions posed by the other party and convey all decisions made by such party during the course of the project including the Services and the other party shall be entitled to rely on such information as conveyed by the Project Manager.

### **5.29.3 Foreign Nationals**

The Contractor shall verify that all its employees, agents and subcontractors are legally entitled to work in the country specified in section 5.13 and other countries required by the nature of the assignment. UNAIDS reserves the right to request legally mandated Contractor-held documentation attesting to the same for each employee, agent or subcontractor of the Contractor assigned to work on the project. Each party hereby



represents that it does not discriminate against individuals on the basis of race, gender, creed, national origin, citizenship.

#### **5.29.4 Compliance with UNAIDS Policies**

The Contractor shall at all times comply with and ensure that the Contractor and each of its subcontractors and their employees and agents comply with any applicable laws and regulations and any UNAIDS policies and all UNAIDS reasonable written direction and procedures relating to: (i) occupational health and safety, (ii) security and administrative requirements, including, but not limited to computer network security procedures, (iii) sexual harassment, (iv) privacy, (v) general business conduct and disclosure, (vi) conflicts of interest and (vii) business working hours and official holidays.

In the event that the Contractor becomes aware of any violation or potential violation by the Contractor, its subcontractor or any of their employees or agents, of any laws, regulations, UNAIDS policies or of other UNAIDS reasonable written directions and procedures, the Contractor shall immediately notify UNAIDS of such violation. UNAIDS, in its sole discretion, shall determine the course of action to remedy such violation, in addition to any other remedy available to UNAIDS in law or equity or under this Agreement.

#### **5.29.5 Ethical Behaviour**

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

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

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