

Management Accountability and Performance Review of 4 Technical Support Facilities

Request for Proposal (RFP)
Reference Number: RFP-2011-32

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1. INTRODUCTION

1.1 Objective of the RFP

The purpose of this Request for Proposal (RFP) is to enter into a contractual agreement with a successful bidder(s) and select suitable contractor(s) to carry out a management accountability and performance reviews of the following UNAIDS Technical Support Facilities (TSF) 1) Southern Africa, 2) South East Asia and the Pacific 3) Eastern Africa and 4) West and Central Africa

The purpose of the consultancy is to review performance and determine whether the TSFs have been relevant, effective, and exhibit value for money.

1.2 Characteristics of the bidder

1.2.1 Status

The provider(s) shall be an **individual consultant, company, or NGO operating** in the field of management and financial consultancy.

Current or past subcontractors of each TSF are ineligible for applying to the review of that particular TSF.

1.2.2 Accreditations

None specific required

1.2.3 Previous experience

For individual bidders, please see requirements in section 1.2.5

For companies or organization bidding, please note the RFP process will focus on the capabilities and experience of the consultants proposed to carry the assignments and to be part of the Review Teams. Please see section 1.2.5 for requirements on the staff proposed. UNAIDS will disqualify proposals that do not propose specific consultants.

1.2.4 Logistic capacity

- The provider must be capable of traveling to the country of the TSF and other countries as identified at short notice during the term of the contract
- Internet Access during the consultancy period

1.2.5 Staffing

The Management Accountability and Performance Review consultancy team for each TSF review will have three members with the following experience:

Common Requirements to all Consultants

- Post-graduate or equivalent experience
- Good understanding of the work of the UN
- Strong ability to organize, analyze and synthesize
- Excellent communication, facilitation and interpersonal skills.
- Excellent report writing skills
- Demonstrated ability to work independently and in a team, with tight deadlines, prioritize and under pressure.
- Previous work experience in the region

Management Consultant

- At least 10 years of experience in areas of program management, and institutional development
- Extensive program evaluation experience
- Good understanding of the HIV epidemic

Financial Accountability Consultant

- At least 10 years of experience in accounting and financial management

Program Consultant – Technical Support, Capacity Development and Quality Assurance

- At least 10 years of experience in areas of, technical needs assessment, technical support provision and, capacity development
- Good overview and knowledge of technical support provision, quality assurance protocols and capacity development
- Extensive program management and evaluation experience

Specific skills for the review team for the TSF WCA: Excellent communication and written skills in French

1.3 Work to be performed

UNAIDS will be undertaking a Management Accountability and Performance Review of: 1) TSF Southern Africa 2) TSF South East Asia and the Pacific 3) TSF Eastern Africa and 4) TSF West and Central Africa during the months of September to December 2011.

Each team will be composed of 3 members, one for each of the areas specified above, bidders can offer their services for the different TSF reviews and for the different consultancy roles. UNAIDS will select the best candidate for each team.

1.3.1 Key requirements:

BACKGROUND

In 2005 in response to the need for increased provision of technical support, UNAIDS led an initiative, based on the recommendation of the Programme Coordinating Board (PCB), to establish regional Technical Support Facilities (TSFs).

The TSFs were established by UNAIDS in order to:

- Provide competitively priced, quality assured and timely short-term technical assistance
- Strengthen the capacity of country partners to manage technical assistance effectively
- Assist in the professional development of national and regional consultants
- Encourage a harmonized and collaborative approach to the delivery of technical assistance in support of country partner-owned and partner-led action plans

To ensure the development of regional capacity to deliver technical support and capacity development services, the TSFs were established as separate entities and managed by existing regionally or nationally-based organizations, institutions, networks or consortia on a contractual basis. Quality assurance is a key element of the TSF model.

The TSFs manage a two year budget of approximately US\$ 2 M which is allocated across four main budget areas: 1) Core operational costs 2) Professional development of national and regional consultants 3) Capacity Development of country partners and 4) the Technical Assistance Fund. The TSFs provide services to a range of partners including National AIDS Coordinating Authorities, Government Ministries and Departments, Civil Society, NGOs, the Business Sector, Development

Agencies, and Global Fund grantees, The TSFs work closely with UNAIDS Secretariat and cosponsors in the design and delivery of the program.

Since their establishment, the TSF have effectively scaled up technical support to national partners in a flexible and timely manner. With over 50,000 technical assistance days delivered to December 2010, the TSFs provide experienced, quality-assured consultants largely from the region to help country partners design programmes and solve problems in the areas of strategic and operational planning, Global Fund proposal development and grant implementation, institutional development, resource mobilization and tracking, monitoring and evaluation, management and in thematic areas. While capacity building is an integral part of the technical support provided, the TSFs also conduct a range of specific capacity building programmes for consultants and country partners. This program has included capacity development support in areas including M&E, operational planning, costing and budgeting and Global Fund grant implementation support.

The agreements constituting the TSFs stipulate that each of the TSFs need to submit 6-month performance reports, and are subject to an in-depth performance review before renewal of the contract for the 2 year extension period. The review documents and the agreed upon recommendations will become important documents for the review process,

The TSFs to be reviewed are currently operational in the following regions and hosted by the following organizations:

Southern Africa

Host: Health and Development Africa,
Location: Johannesburg, South Africa
Serving as host for TSF: from June 2005
Target review date: Early October 2011

Eastern Africa

Host: Centre for African Family Studies (CAFS),
Location: Nairobi, Kenya
Serving as host for TSF: from June 2010
Target review date: Mid-October 2011

West and Central Africa

Host: Bureau d'Appui en Santé Public'96,
Location: Ouagadougou, Burkina Faso
Serving as host for TSF: from December 2005
Target review date: Mid November 2011

South East Asia and the Pacific

Host: International Planned Parenthood,
Location: Kuala Lumpur, Malaysia
Serving as host for TSF: from December 2005
Target review date: Late September 2011.

It is envisaged that each review will take approximately a duration of one month.

PURPOSE OF TSF REVIEW

The purpose of the reviews is to measure performance and determine whether the TSFs have been relevant, effective, and exhibit value for money. It will be on the basis of these reviews that UNAIDS will make a decision on the extension of the TSF contracts and on any changes in their mandate, functions, design and structure.

In particular the reviews will be examining:

- **Relevance:** how well the TSFs mission, design, structure and technical and capacity development delivery areas continue to serve the purpose of the stakeholders. What changes have been made by the TSFs to respond to the needs of stakeholders and the changing context of the AIDS epidemic.
- **Effectiveness:** how well the TSFs are performing in achieving its mission of providing quality assured and timely technical support and capacity development to country partners. The study team will: 1) review the efficiency of the systems, processes and procedures used to deliver technical support and capacity development; 2) review and assess the appropriateness of staffing structures 3) review the efficiency and effectiveness of the TSF quality assurance system of delivering short term technical assistance and capacity development activities; 4) review the areas in which technical support and capacity development are being provided and the results to date and how responsive have the TSFs been to UNAIDS' requirement that they provide short-term technical assistance within a longer term framework ; 5) review the effectiveness of the Technical Assistance Fund (TAF) in providing access to technical support for those who otherwise wouldn't be able to access it 6) review how well the TSF model and the programme delivery contributes to a harmonized collaborative approach with the TS and CD providers, including UNAIDS cosponsors.
- **Value for money:** how well the TSFs are using its resources to reach its mission. The study team will: 1) review professionalism of financial and management systems; 2) cost efficiency for UNAIDS and clients, compared to other TS providers and options, and actions the TSFs have taken to reduce costs of TA; 3) value to UNAIDS in representing and positioning UNAIDS messages and strategy
- **General:** 1) assess the lessons learnt on outsourcing from the TSF that could inform UNAIDS approach to outsourcing in the future; 2) assess the TSFs responsiveness in addressing the recommendations in previous reviews; 3) assess the quality of TSF reporting mechanisms in reflecting a true picture of TSF operations; 4) assess significant achievement and shortcomings and; 5) assess the impact of collaboration with UNAIDS, both globally and regionally.

COMPOSITION OF REVIEW TEAM

Under the global oversight of UNAIDS, the review team will be comprised of three consultants in 1) Management 2) Financial Management and Accountability, and 3) Technical Support, Capacity Development and Quality Assurance in HIV.

UNAIDS reserves the right to select individual consultants from multiple bidders to form the review teams.

The Regional Technical Support Adviser and a representative from the Country Capacity Strengthening Team may accompany the review team.

The process will be based on an already existing TSF review protocol consisting of:

- Review of documentation including monitoring reports and other relevant documentation
- Previous review reports and roadmaps that emanated from the reviews
- In depth Interviews of key clients and stakeholders in country and by telephone
- Questionnaires to key stakeholders
- In-depth interview with TSF staff, host organization and UNAIDS
- Review of TSF processes and systems
- Consolidation of final report

1.3.2 Reporting requirements of the review

The consulting team will be required to produce the following joint deliverables:

1. A presentation of the interim findings of the review
2. An interim report of 20-25 page report plus appendixes with clear actionable recommendations
3. A final synthesized report of 20-25 pages plus appendixes with clear, actionable recommendations.

1.3.3 Finance and accounting requirements

At the end of the assignment the consultant will need to provide detailed individual report with fees and expenses incurred for reimbursement together with supporting documentation.

1.3.4 Performance monitoring

The consultant performance will be based on the initial timeline presented.

1.3.5 Further capacities

No additional required.

2. INSTRUCTIONS TO BIDDERS

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

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.

2.2 Intention to Bid

By **28 July 2011**, the bidder is requested to complete and return by email or fax to UNAIDS:

1. The enclosed **RFP_Acknowledgement 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 form signed**.
 - Email for submissions of acknowledgement: bids@unaid.org
 - Email subject: **RFP-2011-32**

Please note that the Intention to Bid is not a requirement to submit a proposal, however UNAIDS will be able to better identify potential bidders announcing their intention to bid, and communicate with them in case of changes to the RFP or clarifications to questions asked.

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.

2.4 Contents of the Proposal

Proposals may offer services for one or more TSFs in any of the following areas

1) Management Consultant 2) Financial Accountability Consultant 3) Program Consultant – Technical Support, Capacity Development and Quality Assurance

The bidder shall indicate precisely which consultant role(s) and which review:

- 1) TSF Southern Africa
- 2) TSF South East Asia and the Pacific
- 3) TSF Eastern Africa
- 4) TSF West and Central Africa

by completing the attached **RFP_Proposal Submission Form**.

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

2.5 Joint Proposal

No joint proposals will be accepted.

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

UNAIDS will respond in writing (via email only) to any request for clarification of the RFP that it receives prior to **29 July 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.

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 Individual Firm/Organization submitting Proposal

In case of individuals, a CV which includes qualifications and details of relevant experience is required to be attached.

In case of companies bidding, the information about the particular individual(s) who will be assigned to the consultancy needs to be provided with a full CV as indicated above in the case of individual consultants

UNAIDS will evaluate the qualifications and experience of individual in each case.

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

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

The Technical Proposal should be no more than 2 pages, plus appendices. The 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 brief description of the manner in which it would respond to the technical specifications.

c) **Proposed Team Member(s)**

The curriculum vitae of each individual proposed as a team member including their relevant experience and qualifications. The full CV should be attached as an appendix

2.7.4 Financial Proposal

The bidder's **separate** 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.

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

- (a) The daily fee of the consultant
- (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 other cost listed.

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 the 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.

2.8 Format and Signing of Proposals

The proposal should be forwarded to two secure email accounts. The "Technical Proposal" shall be forwarded to TechnicalBids@unaids.org and the "Financial Proposal" forwarded separately to 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) All pages of the proposal shall be numbered in the format 'Page X of Y'.
- 2) The proposal shall be typed 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.
- 3) The proposal and supporting documents 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.

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.

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 10 August 2011 at 17:00 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.

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: **TechnicalBids@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.

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.

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

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.

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.

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.

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.

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 (**20** Points);
- the appropriateness of the proposed approach (**20** Points);
- the experience of the individual or firm in carrying out related assignments (**30** Points);
- the qualifications and competence of the consultant(s) proposed for the assignment (**30** 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. The points allocated to the technical proposal correspond to 60% of the total obtainable points.

3.5 Financial Proposal Evaluation

The financial proposal will only be evaluated if the technical proposal achieves a minimum of 70% of the total allocable points for the technical evaluation. Proposals failing to obtain this minimum threshold will not be eligible for further consideration.

The maximum number of points for the price component is 40% of the total obtainable points.

This maximum number of points will be allocated to the lowest price proposal.

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.

4. AWARD OF CONTRACT

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.**

4.1.1 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.

4.1.2 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.

4.2 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.

4.3 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

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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)

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.

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.

5.13 Place of Performance

The Reviews will be carried out as follows:

- **TSF Southern Africa:** Johannesburg, South Africa, with travel to 1-2 countries in the Southern Africa region
- **TSF South East Asia and Pacific:** Bangkok, Thailand and Kuala Lumpur, Malaysia and travel to 1-2 countries in the South East Asia and Pacific region
- **TSF Eastern Africa:** Nairobi, Kenya and Johannesburg, South Africa and 1-2 countries in the Eastern Africa region
- **TSF West and Central Africa,** Ouagadougou, Burkina Faso, and Dakar Senegal and 1-2 countries in the West and Central Africa region.

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.

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).

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

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.